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United States
Circuit Court of Appeals
For the Ninth Circuit.

SEATTLE RENTON LUMBER COMPANY, a
corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

NOV 10 1942

PAUL P. GIBSON



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Seattle, Washington

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Attorney for Appellee,

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Seattle, Washington [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 21197

SEATTLE RENTON LUMBER CO., a corpora-
tion,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PETITION

Comes now the Seattle Renton Lumber Co., and
presenting its petition, alleges the following facts:

I.

That your petitioner is a corporation organized
and existing under the laws of the State of Wash-
ington, with its principal place of business at Seat-
tle in King County, Washington, which is the
residence of the said corporation. That said cor-
poration has paid all annual license fees owing to
the State of Washington.

II.

That your petitioner made an income tax return
for the year 1933 showing a net income of \$3,571.15,
on which it paid an income tax of \$491.03 and no
excess profits tax. That the Income Tax Depart-
ment of the United States audited the said return

and found that the corrected net income for said year should be \$23,737.70 and that the income tax liability thereon should be \$3263.93, and the excess profits tax owing \$874.39. Your petitioner admits a correction so that the net income should have been \$4119.60, on which the income tax would have been \$566.44, and on which no excess profits tax would have been owing.

III.

On July 1, 1933, your petitioner sold its plant and inventories, being most of its assets except its accounts receivable, to a partnership composed of the stockholders of the corporation, which [2] partnership called itself the Seattle Renton Mill Co. Said partnership made an income tax return of its profits for the last half of 1933, and the partners included in their individual returns their proportion of the partnership income. The report of the audit of the Income Tax Department was to the effect that the said transfer to said partnership was not complete, and the income of the said partnership for the last half of 1933 was therefore ruled to be income received by the corporation, thereby adding to the corporate income \$19,618.10, and causing the extra tax liability over and above that admitted your petitioner as set forth in Paragraph II.

IV.

The corporation protested the action of the Internal Revenue Agent to the Commissioner of Internal Revenue, but its protest was overruled, and

notice of deficiency was given and mailed January 10, 1936 and on May 11, 1936. The corporation made the following additional payments to Alex McK. Vierhus, Collector of Internal Revenue, at Tacoma, Washington.

Additional income tax.....	\$2,772.90
Interest on same.....	350.71
Excess Profits tax.....	874.39
Interest on same.....	110.58

That claims for refund of both the income tax and the excess profits tax were filed with the Collector of Internal Revenue at Tacoma on the 6th day of November, 1936, the said two claims for refund being on Treasury Department Form 843, and being respectively in the words and figures following:

“CLAIM

State of Washington,
County of King—ss.

Name of taxpayer or purchaser of stamps—

Seattle Renton Lumber Co. [3]

Business Address: Bryn Mawr, Washington.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Tacoma, Washington.
2. Period (if for income tax, make separate

form for each taxable year) from January 1, 1933 to Dec. 31, 1933.

3. Character of assessment or tax: Income.

4. Amount of assessment: \$2772.90 and Int. \$350.71. Dates of payment: May 11, 1936.

5. Date stamps were purchased from the Government:

6. Amount to be refunded: Three Thousand Thirty Eight and 40/100 \$3038.40.

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed expires under Section 322 of the Revenue Act of 1934, on May 10, 1938.

The deponent verily believes that this claim should be allowed for the following reasons:

The taxpayer on June 30, 1933 sold all of its assets except its cash and bills receivable and accounts receivable to a partnership called Seattle Renton Mill Co. composed of all its stockholders with interests proportional to their stock holdings in the corporation. This partnership made its separate information return showing profits on the conduct of the business for the last half of the year. The Department in its audit of the corporation books made adjustments showing a net increase of taxable income for the first half year of \$548.45. It also found that the income of the partnership for the last half year should be consolidated with the corporate income on the ground that cer-

tain formalities and certain notices were lacking to make the transfer of the business to the partnership effective. We consent to the adjustment of income for the first half year, thus adding \$548.45 to the net income shown in our return for 1933, but maintain that the partnership was properly formed and conducted the business for the last half of 1933 and that the consolidation of the partnership income with the corporate income was improper. The tax on the additional \$548.45 of income which we admit would amount to \$75.41, and the interest on that item to May 11, 1936, \$9.80. On May 11, 1936 we paid \$2772.90 income tax and \$350.71 interest on the same based on the Department report, and submit that the same should be refunded less the amounts above conceded, or a net refund of \$2697.49 tax and \$340.91 interest on same, together with interest on these sums since May 11, 1936.

SEATTLE RENTON LUMBER CO.

By F. M. ROBERTS

Sec. & Treas.

Sworn to and subscribed before me this 6th day of November, 1936.

[Seal]

MIKE COPASS

Notary Public" [4]

“CLAIM

State of Washington,
County of King—ss.

Name of taxpayer or purchaser of stamps:
Seattle Renton Lumber Co.

Business Address: Bryn Mawr, Washington.

The deponent, being duly sworn, according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Tacoma, Wash.

2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1933 to Dec. 31, 1933.

3. Character of assessment or tax: Excess profits.

4. Amount of assessment, \$874.39 & Int. \$110.58; dates of payment: May 11, 1936.

5. Date stamps were purchased from the Government:

6. Amount to be refunded: Nine Hundred Eight Four 97/100 \$984.97.

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1934, on May 10, 1938.

The deponent verily believes that this claim should be allowed for the following reasons:

The taxpayer on June 30, 1933 sold all of its assets except its cash and bills receivable and accounts receivable to a partnership called Seattle Renton Mill Co. composed of all its stockholders with interests proportional to their stock holdings in the corporation. This partnership made its separate information return showing profits on the conduct of the business for the last half of the year. The Department in its audit of the corporation books made adjustments showing a net increase of taxable income for the first half year of \$548.45. It also found that the income of the partnership for the last half year should be consolidated with the corporate income on the ground that certain formalities and certain notices were lacking to make the transfer of the business to the partnership effective. We consent to the adjustment of income for the first half year, thus adding \$548.45 to the net income shown in our return for 1933, but maintain that the partnership was properly formed and conducted the business for the last half of 1933 and that the consolidation of the partnership income with the corporate income was improper. Without the partnership income consolidated, the net income of the corporation was insufficient to render it liable to any excess profits tax for the reason that its capital stock tax return

showed a value of \$50,000. 121½% of that would be \$6250.00, an amount in excess of the corporate net income without a consolidation of the partnership income.

SEATTLE RENTON LUMBER
CO.

By F. M. ROBERTS

Secretary & Treas.

Sworn to and subscribed before me this 6th
day of November, 1936.

[Seal]

MIKE COPASS

Notary Public.' [5]

V.

That on April 9, 1937 the Commissioner of Internal Revenue mailed a notice to your petitioner that said claims had been rejected, the said notice being in the words and figures following:

“TREASURY DEPARTMENT

Washington

IT:C:CC-4-CCP

Apr. 9, 1937

Seattle Renton Lumber Co.,
Bryn Mawr, Washington.

In re: Claims for refund of \$984.97 and
\$3038.40

for the years 1933

Sirs:

Reference is made to Bureau letter dated January 27, 1937 wherein you were informed that the claims for refund indicated above

would be disallowed. The letter also stated the reasons for the proposed disallowance.

The claims having been disallowed or rejected on Schedule numbered 23241, this notice of disallowance is sent to you by registered mail as required by Section 1103(a) of the Revenue Act of 1932.

Respectfully,

GUY T. HELVERING,

Commissioner

By CHAS. BUNELL

Deputy Commissioner."

VI.

That Alex McK. Vierhus, to whom payment was made of the said income taxes, is no longer Collector of Internal Revenue at Tacoma, Washington as he was when the said payments were made.

Wherefore, your petitioner prays judgment against the United States of America in the following sums: \$2697.49 income tax, and \$340.91 interest paid on same; and \$874.39 excess profits tax and \$110.58 interest paid on same; plus interest at 6% on all of the above stated amounts from the date of payment thereof, towit May 11, 1936.

WETER, ROBERTS &

SHEFELMAN

Attorneys for Petitioner. [6]

State of Washington

County of King—ss.

F. M. Roberts, being first duly sworn, on oath deposes and says: That he is the Secretary of the

Seattle Renton Lumber Co., a corporation, plaintiff in the within action, and as such is authorized to and does make this verification for and on its behalf; that he has read the foregoing Petition, knows the contents thereof, and believes the same to be true.

F. M. ROBERTS

Subscribed and sworn to before me this 5th day of March, 1938.

[Notary Seal] JAMES P. WETER

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Mar. 12, 1938. [7]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant United States of America, by and through its attorneys J. Charles Dennis, United States Attorney for the Western District of Washington, and Gerald Shucklin, Assistant United States Attorney for said District, and for answer to the Petition of the plaintiff herein, admits, denies and alleges as follows:

I.

Defendant admits the allegations contained in paragraph I of plaintiff's petition herein.

II.

Defendant admits the allegations contained in paragraph II of plaintiff's petition herein.

III.

In answer to paragraph III of plaintiff's petition, defendant specifically denies that on July 1st, 1933, or at any other time during the year 1933, the petitioner sold its plant and inventories, being most of its assets except its accounts receivable, to a partnership composed of the stockholders of the corporation, which partnership called itself the Seattle Renton Mill Co. Defendant admits that the alleged partnership made an income tax [8] return of its profits for the last half of 1933, and that the alleged partners included in their individual returns their purported proportion of the alleged partnership income.

Further, in answer to the allegations set forth in paragraph III of plaintiff's petition, defendant states that the Commissioner of Internal Revenue has allowed refunds to such purported partners based, inter alia, on the ground that the income reported by them as received from the alleged partnership of the Seattle Renton Mill Co. was not actually received by them and that this income was taxable as corporation income to the Seattle Renton Lumber Company, a corporation.

Defendant admits all of the remaining allegations set forth in paragraph III of plaintiff's petition.

IV.

In answer to paragraph IV of plaintiff's petition, defendant admits that claims for refund in the words and manner set forth in such paragraph was filed as alleged, but defendant denies that the facts averred in said claim are true. Defendant admits all of the remaining allegations set forth in said paragraph IV of plaintiff's petition.

V.

Defendant admits the allegations contained in paragraph V of plaintiff's petition.

VI.

Defendant admits the allegations contained in paragraph VI of plaintiff's petition. [9]

Wherefore, having fully answered the Petition of the plaintiff herein, defendant prays for judgment of the above entitled Court dismissing said Petition with prejudice, and that it be allowed its costs and disbursements herein.

J. CHARLES DENNIS

United States Attorney.

GERALD SHUCKLIN

Assistant United States
Attorney.

United States of America

Western District of Washington

Northern Division—ss.

Gerald Shucklin, being first duly sworn, on oath deposes and says: That he is an Assistant United

States Attorney for the Western District of Washington, and as such makes this verification for and on behalf of the United States of America, defendant herein; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

GERALD SHUCKLIN

Subscribed and sworn to before me this 24th day of August, 1938.

[Seal]

ELMO BELL

Deputy Clerk, United States
District Court, Western Dis-
trict of Washington.

[Endorsed]: Received a copy of the within answer this 26 day of Aug. 1938.

W. R. SHEFELMAN

Atty for Pltf.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 26, 1938. [10]

[Title of District Court and Cause.]

REPLY

Comes now the Seattle Renton Lumber Co., a corporation, the petitioner herein, and for reply to the Answer of the defendant herein, admits, denies and alleges as follows:

I.

For reply to the new allegations contained in Paragraph III. of said Answer your petitioner

states that the Commissioner of Internal Revenue upon his own initiative made an offer to allow refunds to the partners of the Seattle Renton Mill Co. on their 1933 income tax, basing said offer upon the alleged ground that the income reported by said partners as received from the Seattle Renton Mill Co. was not actually received by them and that said income was taxable as corporate income to the Seattle Renton Lumber Co., a corporation. Your petitioner further states that said offer to allow said refund was not accepted by said partners.

Your petitioner denies, however, that the Commissioner of Internal Revenue actually allowed said refunds to said partners, as stated by defendant.

Wherefore, having fully replied to the Answer of the defendant herein, your petitioner prays for Judgment as in its Petition set forth.

WETER, ROBERTS &

SHEFELMAN

S. HAROLD SHEFELMAN

Attorneys for Plaintiff. [11]

State of Washington

County of King—ss.

F. M. Roberts, being first duly sworn, on oath deposes and says: That he is the Secretary of the Seattle Renton Lumber Co., a corporation, plaintiff in the within action, and as such is authorized to and does make this verification for and on its be-

half; that he has read the foregoing Reply, knows the contents thereof, and believes the same to be true.

F. M. ROBERTS

Subscribed and sworn to before me this 6th day of December, 1938.

[Seal]

VICTOR D. LAWRENCE

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Received a copy of the within Reply this 9 day of Dec. 1938.

J. CHARLES DENNIS,

Atty. for Deft.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 9, 1938. Elmer Dover, Clerk. By S. Cook, Deputy. [12]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties *herto*, by their attorneys of record hereunder signed, that the within cause, which was heretofore submitted to but has not yet been decided by the Honorable Edward E. Cushman, shall be submitted to the Honorable Lloyd L. Black for decision upon the written transcript of the evidence now on file in the within cause, and without the

introduction of further testimony, but with the right reserved to each party to argue the matter orally.

This stipulation is submitted subject to the approval and order of the Honorable Lloyd L. Black.

June 18, 1940.

WETER, ROBERTS &
SHEFELMAN

Attorneys for Plaintiff.

J. CHARLES DENNIS

United States Attorney.

GERALD SHUCKLIN

Assistant United States
Attorney.

[Endorsed]: Filed Aug. 2, 1940. [13]

[Title of District Court and Cause.]

ORAL DECISION

The Court: Everybody ready?

Mr. Roberts: Mr. Shucklin cannot be here today.

The Court: Mr. Clerk, will you see if the United States Attorney or his assistants can be here?

The Clerk: Mr. Winter cannot be here and Mr. Roberts says that Mr. Shefelman cannot be here today.

The Court: I would ask this: Is the reporter who is here a joint reporter for both sides?

Mr. Roberts: I understand so; I have asked him to make a copy of your opinion for us and it is understood that the Government's attorney gets a copy, whether the Government has requested it or not.

The Court: That is a copy of the opinion I am about to render?

Mr. Roberts: We are so informed.

The Court: Whether the Government has made arrangements or not since the Government counsel is [14] absent, plaintiff must permit the Government to obtain a copy of the opinion.

Mr. Roberts: I would like to state that Mr. Shefelman would have been in here but he left by plane for Chicago yesterday afternoon.

The Court: I would like to delay my oral opinion until counsel for the Government are present; but as I am required to continue with a jury in a very important case in Tacoma, beginning at ten o'clock this morning, I will proceed.

I would say that under the requirements the Government's attorneys are to have access to the reporter's notes; and I will now advise counsel of the conclusion to which I have come.

In this action the plaintiff seeks a judgment against the United States for a refund of income tax and excess profits tax and interest thereon paid by the plaintiff in May, 1936, under protest.

It is the contention of the plaintiff corporation that on June 30, 1933 the corporation declared a dividend of all its assets except certain accounts

receivable, and transferred such assets, including the plant and real property of the corporation, to the stockholders as a partnership and that thereafter such partnership conducted what was formerly the business of the corporation. The Government insists that in fact there was no partnership formed; that actually the corporation continued to function and that the business activities, earnings and profits continued to be those of the corporation.

A petition was served and filed in 1938, and after issue was joined in the matter it came on for [15] hearing in January, 1939, before the Honorable E. E. Cushman, Judge of the United States District Court. After the evidence had been presented counsel submitted their arguments by briefs, and before Judge Cushman rendered his decision his illness and retirement occurred.

Thereafter, and in the fall of 1940, pursuant to stipulation of the parties, the matter was submitted to me on the record of the case, consisting of the files, written transcript of the evidence, and the briefs which were submitted by counsel to Judge Cushman in January, 1939, together with oral argument before me.

The defendant had introduced in the hearing before Judge Cushman no evidence except by way of two exhibits, consisting of a check and a letter setting forth the basis on which the government's claim of assessment was rendered and except for such evidence as the government may have introduced by way of cross-examination.

The matter therefore comes before me substantially upon the uncontradicted evidence introduced before Judge Cushman by plaintiff. I did not hear the witnesses testify and so I take it that my decision is to be distinguished from that of Judge Cushman who had an opportunity to observe the witnesses. I may be considered as having heard the case upon depositions.

The transcript shows that the plaintiff company was incorporated in 1929; that it built a sawmill on Lake Washington and was continuously engaged in the manufacture and sale of lumber there until at least the last day of June, 1933. That "at least" is [16] rather the crux of the legal controversy.

There were approximately fourteen stockholders listed on the books of the corporation as holding a total of 900 shares. It seems that Mr. E. M. Roberts had about 237 $\frac{2}{3}$ shares, Mr. James C. Carlson about 215, Mr. James P. Weter about 211, and Mr. C. A. Shinstrom 100 shares, and the balance of 136 shares was divided among about ten other persons varying from 1 share to 37. Mr. Carlson was the president and active manager of the corporation and Mr. Roberts was the secretary-treasurer of the corporation. The trustees appear to have been Mr. James P. Weter, Mr. J. C. Carlson and Mr. F. M. Roberts. With the exception of the stock appearing in the name of Mr. J. C. Carlson and some small amounts in the names of his wife and two children, and the stock held by Mr. J. P. Weter, it appears that the stockholders besides F. M. Rob-

erts were blood relatives or relatives by marriage of Mr. F. M. Roberts.

Mr. Roberts testified that beginning in the spring of 1933, he discussed a change from a corporation to a partnership or a sale of the assets with the different stockholders.

In this connection it is proper to quote the testimony of Mr. Roberts as it appears in the transcript.

In answer to a question this is Mr. Roberts' answer:

"It was discussed with all the stockholders who were of age; it was discussed by me with all of them, except Mr. Carlson's wife and his two children; we had no formal corporate meeting at which it was [17] discussed, but we were, all of us, frequently together in groups, or I with individuals of the group and I discussed it with them, the purposes of it and it met with the approval of all of the stockholders. There was no special discussion, other than the purpose of it with any one except Rex Swan. Rex Swan was the Cashier of the First National Bank at Redmond, in which he owned no stock; he had formerly been bookkeeper of another mill concern in which Mr. Carlson and I were interested, and when this was organized, he took some stock in this company and my discussion with Mr. Swan—I suggested that it would be of advantage to him to become a stockholder of the bank, of which he was Cashier, since he wasn't on the Board of Directors and he would then be able to go on the

Board of Directors and I suggested to him that I would trade him bank stock for his stock in the mill, at the same time telling him that for the first time in the existence of this mill company, the prospects for substantial profits looked good. He said he would rather keep his stock in the mill and it was entirely agreeable to him to have it go into a partnership. I might add this was just (without knowing the date of the beginning of the NRA days) and it looked as though the NRA would enable us to make the mill make money, as it hadn't made it in any amount before."

The purpose of such change, as frankly stated by Mr. Roberts and Mr. Weter, and probably by Mr. Carlson, was to reduce or avoid the payment of income taxes. It was the established practice of the corporation on the last of June and the last of December to take a full inventory and make [18] a profit and loss report. The testimony is that under date of June 15 the following notice was mailed to all of the stockholders of the corporation:

"Bryn Mawr, Washington, June 15, 1933
"To the stockholders of the Seattle-Renton Lumber Company:

"You are hereby notified that there will be a special meeting of the stockholders of this corporation held at the mill office at three P. M., June 30, 1933, to pass upon the question of the sale of the assets of the corporation to a partnership to be formed to take over the same.

(Signed) R. M. ROBERTS, Secretary."

Exhibits 2 and 3 are minutes of a trustees' meeting and a stockholders' meeting, respectively, which purport to have been held at the mill. The minutes of the stockholders' meeting recite that the following stock was personally represented at such meeting: 100 shares, C. A. Shinstrom; 230 shares James C. Carlson; Mr. F. M. Roberts 212 shares; Mr. James P. Weter 222 shares.

However, plaintiff frankly concedes that there was no meeting at all at the mill and that the only meeting on that day of either stockholders or trustees was at the Seattle law office of Mr. Roberts and Mr. Weter. It would appear from the evidence that actually the only stockholders present were Mr. Carlson, Mr. Roberts and Mr. Weter.

At the time of the trustees' meeting and the stockholders' meeting a bill of sale by the Seattle-Renton Lumber Company reciting the consideration of \$98,662.56 was executed by the corporation through [19] Mr. Carlson as president and Mr. F. M. Roberts as secretary of the Seattle-Renton Lumber Company, to the "Seattle-Renton Mill Company, a partnership," and "its successors and assigns" of all machinery and equipment contained in and about the mill building and premises of the grantor at Bryn Mawr, Washington, together with two Mack trucks, one Ford coupe, one power boat "Peacock", its furniture and equipment, and all lumber, logs and supplies on hand at the said premises.

On the same day there was executed by said cor-

poration to F. M. Roberts a warranty deed to the real estate on which the mill was located. It recited that it was "in consideration of \$40,000, of which \$20,000 is by the assumption of the hereinafter described mortgage". It was likewise signed by James C. Carlson, as president, and Mr. F. M. Roberts, as secretary, of said corporation; but actually such deed does not mention nor describe any mortgage except as above stated. The deed was filed for record on January 2, 1936, some time after the Department had insisted that there was no partnership. Up to that time it had remained in Mr. Roberts' possession. On the same day that the deed was executed, June 30, 1933, Mr. Roberts executed a declaration of trust acknowledging conveyance to him of the deed and reciting that it was for the "following named persons in the following proportion"; which is a somewhat different list than appears upon the books of the corporation as stockholders. This recital of this trust deed recited that the title was taken by Mr. Roberts to said real estate in trust for the partners, as the Seattle-Renton Mill Company. The bill of sale did not list the membership [20] of the Seattle-Renton Mill Company, which the bill of sale described as a partnership. Neither the bill of sale nor the declaration of trust was ever filed. Both were kept by Mr. Roberts.

After June 30, 1933, on signs and stationery, the word "lumber" was changed or printed to read "mill", such alteration being by stamp or ink, so

that the name read "Seattle-Renton Mill Company". There was no indication as to whether it was or was not a corporation. In the fall 10,000 checks were printed for the Seattle-Renton Mill Company with blanks for the signatures of the president and secretary. A mistake was made in having such titles printed. But such checks were made use of rather than to send them back.

Mr. Carlson continued as manager at practically the same salary he received before 1933. The same bookkeeper continued on salary. There was no written articles of partnership. Neither was there any written or published notice of the formation of the partnership, and no filing in the auditor's office of a certificate of an assumed business name. Except for the mortgage the payment of the company's indebtedness was on a current basis. Customers of the mill when they telephoned as to the reason the word "lumber" had been changed to "mill" were told the concern had become a partnership without being told the names of any partners and without being given any further explanation.

In 1934 such individuals included in their return their earnings from such business in the last six months of 1933, as their individual income. Mr. Roberts had been associated with a number of these stockholders and perhaps some other persons in different partnerships [21] for which there were no written partnership agreements. The Seattle-Renton Lumber Company, a corporation, continued to exist as such, paying its annual license fees to the State of Washington.

The Government insists that the foregoing and such other circumstances as appear in the evidence wholly fail to establish that the corporate business and operating assets were transferred to a partnership.

The plaintiff insists that under the same facts and circumstances as above mentioned it is established that there was an actual partnership formed which operated the business from June 30, 1933.

The briefs of counsel cited a number of authorities on which they respectively depend. It is not necessary to cite them here because in the main counsel on both sides agree as to the general law of partnership, of taxation and of corporations. It is true, as suggested by counsel for plaintiff, that individuals may be associated as a partnership under an oral agreement which may be most informal. The issues in this case are whether or not on or before June 30, 1933, an actual partnership came into being, and whether on June 30, 1933 the operating assets of the corporation were transferred to an actual partnership then existing and whether or not such a partnership took over what had been previously the business of the corporation.

In the final analysis the issue is whether or not on or before June 30, 1933 there was an actual partnership. I examined the record in this case very diligently, including not only the testimony but the exhibits, and have studied the authorities cited by counsel and have made some independent investigation of [22] my own. Without more ado, I

may advise counsel in this oral opinion that my conclusion is that the plaintiff failed to establish by the preponderance of the evidence that the Commissioner of Internal Revenue was in error or that there was on or before June 30, 1933 a partnership.

I am giving counsel some of the reasons that appeal to me in reaching this conclusion.

The test in this case is whether or not there was a partnership on or before June 30, 1933. I have already referred to much of the testimony on this question. Mr. Roberts is an attorney and it must be assumed that the evidence that he gave was as strong as the facts were. He testified there was a primary purpose to avoid the payment of such income taxes as would be required under corporate organization. True, as stated in the brief, such was permissible. But plaintiff has the burden of proving the timely existence of a partnership and all other requisite steps to accomplish such purpose. It seems to me that the most that Mr. Roberts' testimony tells us is that he spoke to the stockholders of the desirability of forming a partnership some time in the future and that they indicated their approval of such an idea. In fact, the testimony of Mr. Roberts as to Mr. Swan, who was the one to whom the agreement as to the partnership was most definitely stated, reads as follows: "He said he would rather keep his stock in the mill and it was entirely agreeable to him to have it go into a partnership." As to the others generally, according to Mr. Roberts, they were only told the purpose. [23]

Ruling Case Law cited by counsel says this:

"A partnership can be created only by contract either express or implied," and goes on to say that in every case in which a partnership is created there must be an agreement and a meeting of the minds of the parties. That is on page 810 of 20 RCL. On the next page, under "Executory and Executed Agreements", we find this:

"A marked distinction exists in law between an agreement to enter into the copartnership relation at a future day and a copartnership actually consummated. A partnership in fact cannot be predicated on an agreement to enter into a copartnership at a future day unless it be shown that such agreement was actually consummated. So long as an agreement remains executory the partnership is inchoate, not having been called into being by the concerted action necessary under the partnership agreement."

And on page 847 of 20 RCL this language appears:

"The best evidence of the existence of a partnership consists of the agreement or contract between the parties, but it may be proved by any competent evidence."

And further on page 849 it says:

"The burden of proving the existence of a partnership is ordinarily on him who alleges and relies on the fact of its existence."

On page 876 and 877 we find these quotations:

"Yet in the absence of any express agreement

to the contrary, a partner is impliedly bound reasonably to devote himself to the advancement of the copartnership of which he has become a member." Then it says, [24] on page 877, "The general rule is that a partner is not entitled to compensation for services in conducting the partnership business beyond his share of the profits unless there is a stipulation to that effect, and that he has no right by implication to claim anything extra by reason of any inequality of services rendered by him, as compared with those rendered by his copartners."

On pages 912 and 913 we find as an expression of what is generally recognized, the following:

"Whenever the partnership relation is shown to exist, each partner is liable individually for all the debts of the firm, and as it is sometimes stated, each partner is liable in solido for firm debts."

At page 1067 it has the following to say:

"Persons who are not actually partners may nevertheless become subject to the liabilities of partners, either by holding themselves out as such to the public and the world generally, or to particular individuals; or by knowingly or negligently permitting another person to do so. Yet in fact such a person does not become a partner; he is merely liable as a partner; for individuals may be liable as partners as to third persons, while as between themselves they are not to be considered partners."

Some of the reasons that appeal to me in my conclusion that there was no partnership by June 30, 1933, are the following:

First: The notice, as I have read, was to the effect that on June 30, 1933 the stockholders were to pass upon the question of the sale of the assets of the corporation to a partnership to be formed. That is on June 15, 1933 it was acknowledged in the notice that [25] the partnership had not yet been formed. In the trustees' meeting minutes we find this language in the resolution:

"Resolved that the Seattle-Renton Lumber Company sell to a partnership, which will be composed of the same persons who have held stock in the Seattle Renton Lumber Company and which will be known as the Seattle Renton Mill Company * * *."

Again there is an implied acknowledgment that the partnership had not yet been formed.

I am of the opinion that on June 30, 1933 at the stockholders' meeting there were only three stockholders present. I am aware, of course, of the general rule that the minutes of a corporation imply verity, and are presumed to be correct. But under all the evidence in this case the minutes must have been written in advance. They were written anticipating that the stockholders' meeting would be held at the mill. I am quite satisfied, in view of the notice, that no stockholders' meeting could have been held legally at any other place than at the mill as far as binding the stockholders who did not attend. Mr. Roberts stated frankly that it was held in Seattle at his law office for the convenience of Mr. Weter and that Mr. Carlson went down with him to the law office and met Mr. Weter. There was

not a syllable of evidence that Mr. Shinstrom was present. But assuming that Mr. Shinstrom were present and assuming that a majority of the stockholders would be authorized to sell the assets of this corporation, still there was no actual sale. There was at most merely a liquidating dividend. Neither three stockholders nor even four stockholders [26] could on June 30, 1933 agree that some other persons should be partners and make it effective unless those other persons agreed. Now the other persons were not even at this meeting.

I am not overlooking the fact that Mr. Roberts has entered into a number of partnerships without written articles. Such evidence to my mind merely goes to the good faith of Mr. Roberts. There is a far cry between individuals associating themselves in partnership with oral articles and a corporation being transformed to a partnership. In the one instance a partnership is implied from very casual evidence. That is because there is a necessity of some legal classification of their acting together. But where there is an actual corporation if the stockholders continue to carry on a business which the corporation has been previously carrying on there is no necessity to call the stockholders partners. There is no necessity of suggesting that a partnership is the vehicle because the corporate vehicle is already in existence and they have been traveling in it.

I was unable to find any authorities, and counsel have cited me none, where a corporation was trans-

formed into a partnership of its stockholders under the casual circumstances produced in the evidence. I have not overlooked the contention of Mr. Shefelman that these persons whom the plaintiff contends were partners could not have escaped liability for being partners. As I have indicated by the quotations from Ruling Case Law such would not be because they were partners, but because by certain conduct of their own they have estopped themselves from denying they were partners. [27] If we adopt the principle of estoppel I am not sure that it would apply to more than Mr. Weter, Mr. Roberts and Mr. Carlson. It might possibly apply to Mr. Shinstrom. I find nothing in this record to estop the other ten or eleven stockholders from denying they were partners. Certainly the Government could not be estopped from asserting what were the real facts merely because three or four who met at a meeting on June 30, 1933 would be estopped.

There is one question which was not discussed by counsel except by implication, and that is what was the effect, if any, of the income tax returns in 1934 as shown by the pleadings? I assume such returns were made about March, 1934. It is not necessary for me to determine whether or not by such income tax returns the June 30, 1933 offer of Mr. Carlson, Mr. Roberts and Mr. Weter to the others to join in a partnership was accepted and ratified. I am much inclined to believe that in March, 1934 what previously had been an agreement for a partnership became a partnership in

fact. However, no such ratification in 1934 between the parties could relate back to June, 1933 as against the Government. It is not permitted to await developments and then to bind the Government as of the original date of subsequent ratification.

If a corporation could be converted into a partnership under the facts and circumstances here related then minority stockholders generally would be in a very perilous situation.

I have not mentioned the failure to file or even to execute a certificate of assumed business name or the failure to file the trust agreement or bill of sale, [28] or failure to record the deed as being fatal. There can be no question but that if the parties intended to convince third parties that a partnership had come actually into being on June 30, 1933 that it would have been most advisable to have done the things which in this instance were not done. However, if the stockholders did not actually form a partnership on or before June 30, 1933 even the doing of all these things would not have made a partnership exist.

As I stated, I was not the judge who heard the witnesses, and my conclusions do not have the weight of finality of a judge before whom the testimony was taken. On the record presented to me I have been unable to reach any other conclusion than as stated here.

The plaintiff's petition and action will be dismissed.

Mr. Winter: We will present findings, conclusions and judgment accordingly, on your Honor's ruling.

The Court: I would like the record to show this, if it does not already show it—I have no finding or feeling of any bad faith whatsoever in this matter. I just feel that some of the stockholders incorrectly assumed that a majority of the stockholders could by their vote convert the absent ones from stockholders to partners.

The Court will be adjourned until Monday morning next.

[Endorsed]: Filed Aug. 25, 1942. [29]

[Title of District Court and Cause.]

No. 21197

MOTION FOR A NEW TRIAL.

Comes now the plaintiff, Seattle Renton Lumber Co., a corporation, by its attorneys Weter, Roberts & Shefelman and S. Harold Shefelman, and moves the court to grant a new trial in this action for the following cause materially affecting the substantial rights of the plaintiff, to-wit:

Insufficiency of the evidence to justify the decision of the Court. There was no evidence adduced in this action that the plaintiff engaged in business or received income so as to subject it to a tax after June 30, 1933, but to the contrary, all of the evidence in this action, being the evidence of the plain-

tiff, uncontroverted by the defendant, established that the plaintiff did not engage in any business nor receive any income, so as to subject it to a tax, after June 30, 1933. Under the evidence the decision of the court was error. Judgment should have been granted the plaintiff in accordance with the prayer of its petition.

This motion is based upon the files and records of this court in this action and upon the reporter's transcript of the testimony of the witnesses.

WETER, ROBERTS &
SHEFELMAN

S. HAROLD SHEFELMAN

Attorneys for Plaintiff.

Received a copy of the within Motion this 27 day of Aug. 1941.

J. CHARLES DENNIS

Attorney for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 27, 1941 [30]

[Title of District Court and Cause.]

No. 21197

ORDER

The plaintiff's motion for new trial in the above-entitled cause having come on regularly for hearing before the above-entitled court, Lloyd L. Black presiding therein, on the 13th day of July, 1942, the plaintiff appearing by its attorneys, Weter, Roberts

& Shefelman, being represented in court by S. Harold Shefelman, and the defendant appearing by its attorney, J. Charles Dennis, United States Attorney for the Western District of Washington, being represented in court by Thomas R. Winter, Special Assistant to the Chief Counsel for the Bureau of Internal Revenue, and after oral argument and the Court being fully advised, it is hereby

Ordered that the plaintiff's motion be and the same is hereby denied.

Done in open court this 13th day of July, 1942.

(Signed) LLOYD L. BLACK

Judge

Plaintiff excepts to the above order denying its motion for new trial and said exception is hereby allowed.

(Signed) LLOYD L. BLACK

Judge

Approved as to form and notice of presentation waived.

(Signed) WETER, ROBERTS &
SHEFELMAN

Presented by:

(Signed) THOMAS R. WINTER

Special Ass't to the Chief
Counsel Bureau of Internal
Revenue

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jul. 13, 1942. [31]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now comes the defendant, United States of America, by J. Charles Dennis, Esquire, United States Attorney for the Western District of Washington, Gerald Shucklin, Esquire, Assistant United States Attorney for said District, and Thomas R. Winter, Esquire, Special Attorney, Bureau of Internal Revenue, and respectfully moves that the Court herewith make, declare and enter special findings of fact and conclusions of law as follows:

FINDINGS OF FACT

I.

Seattle Renton Lumber Company, (hereinafter called taxpayer) is, and at all times pertinent to this action was, a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Seattle, in King County, Washington. Up to the time of filing this action, it had paid all annual license fees to the State of Washington, provided for by the laws of that state. [32]

II.

The taxpayer filed a corporate income tax and excess profits tax return purporting to be for the calendar year 1933, but including only the results of its operations for the period January 1, 1933. to June 30, 1933, inclusive, which disclosed a net in-

come of \$3,571.15, no excess profits tax liability, and an income tax liability thereon of \$491.03, which it paid.

III.

Thereafter, the Commissioner of Internal Revenue notified the taxpayer of his determination that the taxpayer's net income for the year 1933 was \$23,737.70, and that there was an income tax deficiency of \$2,772.90, and an excess profits tax deficiency of \$874.39, and these tax deficiencies with interest thereon of \$350.71, and \$110.58, respectively, were assessed by the Commissioner, and paid by the taxpayer on May 11, 1936.

IV.

The principal increase in the net income made in the Commissioner's determination was his inclusion of the income arising from the operations of the business from June 30, 1933, to December 31, 1933, which he refused to recognize as income belonging to the taxpayer's stockholders on the theory that they were in that period operating on a partnership basis; he ruled so on the ground that there was no partnership formed; and that actually the corporation continued to function, so that the business activities, earnings and profits during that period continued to be those of the corporation.

V.

Thereafter, on November 6, 1936, the taxpayer [33] filed claims for refund of \$3,038.40, income tax and interest, and for excess profits tax of \$874.39,

and interest thereon of \$110.58, continuing to insist on the partnership theory. The Commissioner rejected these claims and the taxpayer was notified of this action by letter dated April 9, 1937.

VI.

There was no partnership formed by the stockholders of the taxpayer prior to, or on June 30, 1933, or at any time before January 1, 1934.

VII.

The taxpayer operated the business on the same basis after June 30, 1933, as it did prior thereto. Such steps as were taken to change the form of organization were taken for the purpose of reducing, and to avoid the payment of income taxes. However, the steps taken were not sufficient to effectuate a termination of corporate ownership and operation and to supplant the corporation by a different owning and operating organization. It is to be noted that the same interests were supposedly continued in ownership and control of the alleged partnership as were in control of the corporation, but the corporate stockholders were not made partners by any of the steps which were taken.

VIII.

The income arising out of the operation of the business subsequent to June 30, 1933, was income of the taxpayer.

IX.

In any event, the plaintiff has not satisfied the requirements of the burden of proof. [34]

X.

It appears from this record that overpayment of tax is not established.

CONCLUSIONS OF LAW

I.

The evidence and every inference drawn therefrom is insufficient to justify a judgment in favor of the plaintiff for the amount claimed, or in any amount whatsoever.

II.

From the evidence and every inference properly drawn therefrom, defendant is entitled to judgment, including costs.

III.

The plaintiff has failed to sustain his burden of proving that the Commissioner erred in his determination of the plaintiff's income and excess profits tax liabilities for the tax year 1933.

IV.

The taxes involved herein were legally assessed against and collected from the plaintiff.

V.

The defendant is entitled to judgment.

Dated August 20, 1941.

LLOYD L. BLACK

District Judge

Requested by

J. CHAS. DENNIS

United States Attorney

GERALD SHUCKLIN

Asst. United States Attorney

THOMAS R. WINTER

Special Attorney, Bureau of
Internal Revenue

Presented by

THOMAS R. WINTER

of counsel for Def.

Copy received Aug. 19, 1941.

WETER, ROBERTS &

SHEFELMAN,

Attorneys for Plaintiff.

[Endorsed]: Aug. 20, 1941. [35]

In the District Court of the United States for the
Western District of Washington, Northern
Division

CIVIL ACTION

No. 21197

SEATTLE RENTON LUMBER COMPANY,
a corporation,

Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above entitled cause came on regularly for trial on March 15, 1941, before the Court, sitting without a jury, the plaintiff appearing by S. Harold Shefelman, Esq., its attorney, and the defendant appearing by J. Charles Dennis, Esq., United States Attorney for the Western District of Washington, and by Gerald Shucklin, Esq., Ass't United States Attorney, and by Thomas R. Winter, Esq., Special Attorney, Bureau of Internal Revenue; and the testimony of witnesses and documentary evidence having been introduced by the parties and received, and the cause having been submitted to the Court for decision, and the Court having made and filed its findings of fact and conclusions of law, and having ordered a judgment be entered in favor of the defendant in accordance therewith;

Now, Therefore, it is the Judgment of this Court that the plaintiff recovered nothing of the defendant, and that the defendant do have and recover of the plaintiff the costs and disbursements of this action.

Dated this 20th day of August, 1941.

(Signed) LLOYD L. BLACK

District Judge

Presented by

THOMAS R. WINTER

of Counsel for Defendant

Copy received Aug. 19-41.

WETER, ROBERTS &

SHEFELMAN

Atty's for Plt.

[Endorsed]: Aug. 20, 1941. [36]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the United States of America, defendant above named, and J. Charles Dennis, United States Attorney, Gerald Shucklin, Assistant United States Attorney, and Thomas R. Winter, Special Attorney, Bureau of Internal Revenue.

Notice is hereby given that the Seattle Renton Lumber Co., a corporation, plaintiff above named, appeals to the United States Circuit Court of Appeals, Ninth Circuit, from the judgment of the court

herein entered on the 20th day of August, 1941, the pertinent part of which reads as follows:

“Now, Therefore, it is the Judgment of this Court that the plaintiff recovered nothing of the defendant, and that the defendant do have and recover of the plaintiff the costs and disbursements of this action.”

Dated this 25th day of August, 1942.

SEATTLE RENTON LUMBER
COMPANY,
a corporation,
By WETER, ROBERTS &
SHEFELMAN,
Its Attorneys

[Endorsed]: Sep. 5, 1942. [37]

[Title of Court and Cause.]

ORDER

This matter having come on regularly for hearing in open Court on the application of Seattle Renton Lumber Co., a corporation, for an order directing the Clerk to include certain exhibits in the record on appeal herein to the United States Circuit Court of Appeals, Ninth Circuit; it appearing that parties hereto have stipulated that certain exhibits be included in the record on appeal,

Now, Therefore, it is hereby Ordered that the Clerk of this court include in the record on appeal herein to the United States Circuit Court of Appeals, Ninth Circuit, all of the plaintiff's exhibits,

being numbers 1 to 13 inclusive, and all of the defendant's exhibits, being numbers A1 and A2 herein.

Done in Open Court this 1st day of October, 1942.

LLOYD L. BLACK

Judge

Presented by:

WAYNE C. BOOTH

Approved:

J. CHARLES DENNIS

Attorneys for the United
States.

[Endorsed]: Oct. 1, 1942. [38]

[Title of District Court and Cause.]

STIPULATION OF RECORD ON APPEAL

To The Honorable Clerk of the above entitled
Court:

The Seattle Renton Lumber Co., a corporation, appellant, and the United States of America, appellee, by their respective attorneys, Weter, Roberts & Shefelman, and J. Charles Dennis, and Thomas R. Winter, stipulate and designate that the following parts of the record, proceedings and evidence in the above entitled action be included in the record on appeal to the United States Circuit Court of Appeals, Ninth Circuit:

I.

The following pleadings, stipulations, motion and notice:

- a. Plaintiff's Petition, filed March 12, 1938
- b. Defendant's Answer, filed August 26, 1938
- c. Plaintiff's Reply, filed December 9, 1938
- d. Stipulation submitting case to the Honorable Lloyd L. Black, Judge, filed August 2, 1940.
- e. Plaintiff's Motion for New Trial, filed August 27, 1941
- f. Plaintiff's notice of appeal.
- g. Stipulation of record on appeal.

II.

Findings of Fact and Conclusions of Law, signed by the Hon. Lloyd L. Black, Judge, dated and filed August 20, 1941.

III.

Judgment, signed by Hon. Lloyd L. Black, Judge, dated and filed on August 20, 1941. [39]

IV.

Order, signed by Hon. Lloyd L. Black, Judge, dated and filed July 13, 1942.

V.

Reporter's Transcript of Evidence and proceedings in toto, (entitled Statement of Facts), two copies of which are herein filed.

VI.

All of plaintiff's exhibits, being numbers 1 to 13 inclusive, and all of defendant's exhibits, being numbers A-1 and A-2.

VII.

Hon. Lloyd L. Black's decision rendered March 15, 1941, and filed August 27, 1942.

Dated this 1st day of Sept., 1942.

WETER, ROBERTS &
SHEFELMAN

Attorneys for Appellant,
Seattle Renton Lumber Co.

J. CHARLES DENNIS
THOMAS R. WINTER

Attorneys for Appellee, United
States of America.

[Endorsed]: Sep. 8, 1942. [40]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 40, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause together with original Statement of Facts as filed Sept. 8, 1942, as is required by stipulation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the

judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 34 folios at 5c.....	\$ 1.70
82 folios at 15c.....	12.30
Appeal Fee	5.00
Certificate of Clerk to Transcript of Record.....	.50
Certificate of Clerk to Original Exhibits.....	.50
Total.....	\$20.00
	[41]

I hereby certify that the above Appeal Fee and cost for preparing and certifying the record, amounting \$20.00, has been paid to me by the attorney for the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 2d day of October, 1942.

[Seal]

JUDSON W. SHORETT,

Clerk of the United States
District Court for the West-
ern District of Washington

By TRUMAN EGGER

Chief Deputy [42]

[Title of District Court and Cause.]

STATEMENT OF FACTS

Be It Remembered, the above-entitled action came on regularly for hearing on this the 23d day of January, 1939, before the Honorable Edward E. Cushman, Judge, sitting in the above-entitled Court, in Tacoma, Washington;

The plaintiff was represented by its attorneys, Weter, Roberts & Shefelman, of Seattle, Washington;

The defendant was represented by its attorney, Thos. R. Winter, Esq., Special Representative, General Counsel, Internal Revenue Bureau, of Seattle, Washington;

Whereupon the following proceedings were had and testimony taken, to-wit: [2*]

Mr. Shefelman: Your Honor, I shall make a statement of the case and follow our petition in the case because, with the exception of a portion of one paragraph, the Government admits all of the allegations of our petition and, therefore, it will be unnecessary for us to adduce any testimony on those points.

(Makes opening statement on behalf of the plaintiff herein.)

Mr. Winter: (Makes opening statement on behalf of the defendant herein.)

*Page numbering appearing at foot of page of original Reporter's Transcript.

TESTIMONY

F. M. ROBERTS,

called as a witness on behalf of the plaintiff herein,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Shefelman:

Q. Your name is F. M. Roberts? A. Yes.

Q. Where do you live, Mr. Roberts?

A. Seattle.

Q. How long have you lived there?

A. Since 1903.

Q. Your profession is what?

A. I am a lawyer.

Q. And you are a member of the firm of which I am, a member of the firm of Weter, Roberts & Shefelman? A. Yes.

Q. You have practiced law in Seattle since what time? [3]

A. I was admitted to the Bar, I think, in the spring of 1904, end of 1903, and have practiced continuously.

Q. What was your connection with the corporation known as the Seattle Renton Lumber Company?

A. I was, and am, one of the stockholders, and was Secretary and Treasurer of the Company and one of the Board of Trustees.

Q. When was the corporation organized?

A. In the spring of 1929.

Q. And its business was what?

(Testimony of F. M. Roberts.)

A. After incorporation, it built a sawmill on the shores of Lake Washington and was continuously engaged in the manufacture and sale of lumber there up until the last day of June 1933.

Q. Who were the other stockholders in the corporation?

A. James C. Carlson, who was the President and active Manager of the concern; James P. Weter, my law partner; C. A. Shinstrom, my brother-in-law, who is Cashier of the First National Bank of Kirkland; Rex C. Swan, another brother-in-law, who is Cashier of the First National Bank of Redmond. At the time of the inception of the corporation, F. W. Roberts, who was then my father but who died prior to June 30th, 1933, and his interest in the corporation went one-third to myself, one-third to Mrs. Shinstrom, my sister, one-third to my sister, Estelle Roberts—and one-third to myself. The Mrs. Shinstrom I speak of being the wife of C. A. Shinstrom, the Cashier of the First National Bank of Kirkland. Then there were a few shares of stock in my three children, and there were, I think, five shares each in the name of [4] Mr. Carlson's wife and in the name of his two minor daughters.

Q. You and Mr. Weter, of our firm, had been associated together how long in the practice of law?

A. Since 1904.

Q. And have been partners since that time?

A. Yes, as Weter and Roberts, up to some years ago, when Mr. Shefelman joined the firm.

(Testimony of F. M. Roberts.)

Q. You speak of the Kirkland Bank and the Redmond Bank, what is your connection with those institutions?

A. I am President of both of them.

Q. And these other persons of whom you speak were in this transaction were brothers-in-law, Mr. Swan and Mr. Shinstrom, are they also interested in the banks with you? A. Yes.

Q. And is Mr. Carlson interested in any of the banks with you?

A. He is at the present time at Kirkland but I am not sure whether he was a stockholder there at this time, in 1933, or whether he was not.

Q. He is a member of the Board, of course?

A. Yes.

Q. What happened on June 30th, 1933, Mr. Roberts, that causes you to limit your statement that the Seattle Renton Lumber Company operated a mill until that date?

A. On that date, the Seattle Renton Lumber—the mill Company, the corporation, sold its business, including all tangible real estate, personal property, to a partnership, which we named the Seattle Renton Mill Company. [5]

Mr. Winter: Was that contract in writing?

A. There was no contract entered into at that time; there was a conveyance of the real estate.

Mr. Winter: We object to it, we object that the conveyance, the contract is the best evidence.

Mr. Shefelman: I am going to put them in evi-

(Testimony of F. M. Roberts.)

dence. This is preliminary to describing what occurred.

The Court: With that understanding, the objection is overruled.

Q. Now, you speak of this happening on the 30th of June of 1933, had there been any discussion of this change from a corporation to a partnership or sale of the assets prior to that date?

A. Yes, the discussion of that began—I couldn't give a date, but in the spring of 1933.

Q. What was the purpose in making this transfer?

A. To render ourselves liable to smaller income taxes.

Q. In short, to avoid paying any income tax, if it could be legally avoided?

A. Well, to avoid any sizeable corporate income tax and have the profits of the concern reported by the individuals who took it as partners.

Q. You say that discussion started early in 1933. With whom was this matter discussed?

A. It was discussed with all of the stockholders who were of age; it was discussed by me with all of them, except Mr. Carlson's wife and his two children; we had no formal corporate meeting at which it was discussed, but we were, all of us, frequently together in groups. [6] or I with individuals of the group and I discussed it with them, the purposes of it and it met with the approval of all of the stockholders. There was no special discussion, other

(Testimony of F. M. Roberts.)

than the purpose of it with any one except Rex Swan. Rex Swan was Cashier of the First National Bank at Redmond, in which he owned no stock; he had formerly been bookkeeper of another mill concern in which Mr. Carlson and I were interested and when this was organized, he took some stock in this Company and my discussion with Mr. Swan—I suggested that it would be of advantage to him to become a stockholder of the bank, of which he was the Cashier, since he wasn't on the Board of Directors and he would then be able to go on the Board of Directors and I suggested to him that I would trade him bank stock for his stock in the mill, at the same time telling him that for the first time in the existence of this mill company, the prospects for substantial profits looked good. He said he would rather keep his stock in the mill and it was entirely agreeable to him to have it go into a partnership. I might add this was just (without knowing the date of the beginning of the NRA days) and it looked as though the NRA would enable us to make the mill make money, as it hadn't made it in any amount before.

Q. Now, Mr. Roberts, you mentioned that these persons were associated with you in those two banks. In addition, you own and control certain other banks, where they are also interested with you, do you not, the Banks at Eatonville, Orting and Morton?

A. Well, certain of them are interested, not the whole group. [7]

(Testimony of F. M. Roberts.)

Q. But there are certain members of this group interested with you in various of these institutions?

A. Yes.

Q. Were any written articles of partnership executed by the partners in connection with the organization of this partnership, known as the Seattle Renton Mill Company, on July 1st?

A. No.

Q. Had you been associated in partnerships previously with any of these other persons who are partners in this Company?

Mr. Winter: I object to that as irrelevant and immaterial.

The Court: Overruled.

A. Yes, I had been associated in partnerships with all of them.

Q. May I ask, if you don't mind, that you relate as briefly as possible the various partnerships you have been in and the length of time these persons have been associated in together, whereby no articles of partnership——?

Mr. Winter: (Interrupting) This is an attempt to show a custom, to prove it was done in this case. I think it is immaterial.

The Court: Overruled.

Mr. Winter: Exception.

A. The Bear Creek Timber Company was a partnership in which Mr. Carlson, Mr. Shinstrom, Mr. Swan, my wife and myself were interested and, may I interpose here to say that my wife had some stock in this corporation which was her separate property

(Testimony of F. M. Roberts.)

and I think I didn't enumerate her [8] amongst the stockholders; we were interested in that Company, which was in existence four or five years, made a partnership income tax return, but had then gone out of business.

Q. Did you have written articles of partnership?

A. We had no written articles of partnership. Mr. Weter and I had been law partners through this period of years and we never had any written articles of partnership, though in addition to our law practice we owned considerable amount of real estate, part in his name and part in my name, none of which was in both names. I am interested with them in—and have been for a long time and now am—with Mr. Weter and Mr. Shinstrom, as C. A. Shinstrom Company, a partnership which never had any written articles.

Q. What business do they engage in?

A. Fire insurance. I am interested in a partnership called the Stockholders' Fund, of the First National Bank of Kirkland, in which the partners are the same persons as the stockholders in the Bank but included Mr. Shinstrom, Mrs. Roberts, my father was a partner, and after his death, my sister became, who is the same one here, Mrs. Roberts and myself and there was nothing written to evidence that partnership. There was a similar partnership called the Stockholders' Fund of the First National Bank of Redmond, in which the same persons were interested, which had no written articles of partner-

(Testimony of F. M. Roberts.)

ship and which always made its partnership income tax returns. Mr. Weter and I are interested with G. T. Hagen, at Eatonville, in a partnership known as G. T. Hagen & Company.

Q. In what business? [9]

A. Insurance. I don't think of any others at this moment.

Q. None of those ever had any written articles?

A. Never had, up to the time of this examination, this question, I never had written articles of partnership in any partnership in which I was ever interested.

Q. In connection with these Banks, may I ask, you have just retired as the President of the State Bankers' Association, have you not? A. Yes.

Q. What preparations were made by the Corporation's officers prior to June 30th, 1933, preparatory to actually making the transfer to the partnership?

A. As I said before, we had discussed the matter; it met with the approval of all of the people interested, and I then instructed—for instance, Mr. Dougherty, the bookkeeper at the mill and Mr. Carlson, the Manager, informed them of our intent to make this arrangement and asked that they get the books in shape so that we could accomplish this purpose on the last day of June. I might add that it had been our habit to take off a profit and loss report, semi-annually, on the last of December and, also, on the 30th of June, taking a full inventory,

(Testimony of F. M. Roberts.)

and I made that request in advance so they could have their inventories all up to date and everything ready so that the whole thing could be accomplished on the 30th of June. Then, some two weeks before that, I sent out a written notice to the partners——

Q. (Interrupting) Pardon me, just a moment, before you continue. Mr. Clerk, will you mark these, please? I might say I have prepared copies of the Minutes of the [10] Stockholders' and Trustees' meeting of June 30th, 1933, and of the notice sent to the stockholders. I have the original Minute Book here and I think Counsel had an opportunity to examine it. I would like leave, of course, with the consent of Counsel, to use the copies in lieu of the originals, so not to have to put the Minute Books in evidence.

Mr. Winter: No objection to that procedure, as long as we may have the opportunity to check them, finally.

Q. Showing you Plaintiff's exhibit No. 1 for identification, I will ask what that is a copy of?

A. That is a copy of the notice which was mailed out from my office to the stockholders of the mill company.

Q. That was mailed when?

A. The 15th of June.

Q. There is that designation?

A. Yes, that is the only way I know.

Mr. Shefelman: I offer Plaintiff's exhibit No. 1 in evidence.

(Testimony of F. M. Roberts.)

Mr. Winter: No objection.

The Court: Admitted.

Plaintiff's exhibit No. 1, copy of notice to stockholders, mailed June 15th, last above referred to, admitted in evidence.

PLAINTIFF'S EXHIBIT NO. 1

Bryn Mawr, Washington,
June 15, 1933

To the Stockholders of
the Seattle-Renton Lumber Co.:

You are hereby notified that there will be a special meeting of the stockholders of this corporation held at the mill office at 3 P.M. June 30, 1933 to pass upon the question of the sale of the assets of the corporation to a partnership to be formed to take over the same.

F. M. ROBERTS
Secretary

Copy of above mailed all stockholders of record
June 15, 1933.

F. M. ROBERTS
Secretary

[Endorsed]: Admitted Jan. 23, 1939.

(Testimony of F. M. Roberts.)

Mr. Shefelman: (Read's Plaintiff's exhibit No. 1 to the Court.)

Q. Did you actually have your Trustees' meeting on the 30th of June 1933, Mr. Roberts?

A. Yes. [11]

Q. Will you tell the Court where you first met and what happened?

A. We had first intended to meet out at the mill and then things in the office were fairly busy and Mr. Weter didn't want to be gone.

Q. When you speak of the "office" you mean?

A. Our law office. Mr. Weter didn't want to be gone; it was some question how rapidly we could have the figures together at the mill, so I went out to the mill, I don't know what time of day; I was there, quite a long while, assisting in putting the figures together and getting it in shape and then when we had those figures all in shape, Mr. Carlson and I left the mill and came into the law office, where we actually had the meeting, although the Minutes recite the meeting was at the mill.

Q. You speak of Mr. Carlson, Mr. Roberts, other than the Carlson family, I believe you have already testified that Mr. Weter, who has been associated with you since 1903 in the practice of law, was a member of the partnership—all other persons, as I understand, are your relatives?

A. Yes.

Q. Aside from Jim Carlson, Jim Weter?

A. Yes.

(Testimony of F. M. Roberts.)

Q. Had Mr. Carlson been associated with you in any way prior to 1929, when the Seattle Renton Lumber Company began to operate its mill?

A. Yes, I was interested in another mill in the country and got acquainted with Carlson, at Eatonville, where he ran a shingle mill in the Ohop Valley; this other [12] company I was in wasn't operating successfully. I think in 1922, I wouldn't be too certain, it might have been 1922 or 1923, I asked Mr. Carlson to come down to that mill to take over a part of the management, which he did and in the course of six months, took over the full management of that mill and we operated that mill continuously up until after we had built this mill, for some time after 1929 and, also, we were interested in this Bear Creek Timber Company, a partnership which was engaged in the logging business.

Q. The name of the mill to which you have reference, he managed for you previously, was the Cottage Lake Lumber Company?

A. It was changed to that name sometime after that; it had been the Getchell Lumber and Shingle Company.

Q. That is located——?

A. (Interrupting) It was located east of Seattle, between Seattle and Duvall.

Q. I have had marked for identification as Plaintiff's exhibit No. 2, what we have prepared as a copy of the Minutes of the Trustees' meeting of that date, which appear in the original Minute Book.

(Testimony of F. M. Roberts.)

Mr. Winter: I have no objection.

Mr. Shefelman: I will offer a copy of the Minutes of the Trustees' meeting of June 30th, 1933, as a true copy of the original Minutes of the meeting.

Mr. Winter: No objection.

The Court: Admitted.

Plaintiff's exhibit No. 2, last above referred to, admitted in evidence. [13]

PLAINTIFF'S EXHIBIT NO. 2

Trustees' Meeting

A meeting of the Trustees of the Seattle Renton Lumber Company was held at the mill office on June 30, 1933 there being present James P. Weter, James C. Carlson and F. M. Roberts. The minutes of the last meeting of the Trustees were read and approved, after which a financial statement of the corporation was presented for the consideration of the Board, the said statement appearing after these minutes in the minute book.

After a discussion of this statement it was the opinion of the Trustees that the corporation should go out of business, and that the mill and business should be taken over by a partnership composed of the present stockholders. It was at first deemed advisable to turn over everything to such a partnership, but after discussion it was decided that the corporation should retain its Accounts Receivable and the following Resolution was then presented:

(Testimony of F. M. Roberts.)

“Resolved that the Seattle Renton Lumber Company sell to a partnership, which will be composed of the same persons who have held stock in the Seattle Renton Lumber Company and which will be known as the Seattle Renton Mill Company, all of its real estate and tangible personal property of every description at the figures the same are now carried upon the books of the corporation, less the depreciation reserve; and that the offer of the said partnership to purchase upon the said terms and to assume the mortgage upon the mill plant in the sum of \$20,000.00 be accepted, and that the President and Secretary of the corporation be authorized to do whatever acts are necessary to complete the said sale. Further, that at the same time said sale is consummated, a dividend be declared of the total amount realized from such sale, towit, \$118,662.56. That of the said amount \$1368.43 represents actual earnings, and will be a dividend in the proper sense of the word, and that the balance be shown as a liquidating dividend, the same being used first to liquidate the paid in surplus, and thereafter on account of capital. That the book entries for the said sale and the declaration of the said dividend shall be as follows:

(Testimony of F. M. Roberts.)

Real Estate	30,000.00
Mill and equipment.....	101,763.64
Mack truck	5,500.00
2nd hand Mack.....	345.00
Ford Coupe	669.00
Boat	1,773.12
Roadway	1,701.07
Office Equipment	580.48

142,332.31

Less depreciation reserve..... 20,086.92

Carried fwd. 122,245.39

Brought fwd. \$122,245.39

Lumber inventory	8,627.23
Log inventory	7,734.94
Supplies Inventory	55.00

\$138,662.56

Mortgage (assumed by buyers).....	20,000.00
Dividend (undivided profits).....	1,368.43
Surplus (paid in).....	32,500.00
Capital	84,794.13

138,662.56''

Passage of the Resolution was moved, seconded and unanimously carried.

Thereafter the Treasurer was instructed to pay a 5% tax upon the said dividend, and to report the same as required by law.

On motion the meeting adjourned.

F. M. ROBERTS

Secretary

[Endorsed]: Admitted Jan. 23, 1939.

(Testimony of F. M. Roberts.)

Q. Mr. Roberts, with reference to the statement that the meeting was held at the mill office, I believe you have already testified that, in fact, that two of you met there and you adjourned to our law office in the Northern Life Tower?

A. That is correct.

Q. The mill is situated how far from the office by automobile?

A. I suppose eight miles.

Mr. Shefelman: (Reads Plaintiff's exhibit No. 2 to the Court.)

Q. First, with reference to the statement contained herein, Mr. Roberts, as follows: "It was at first deemed advisable to turn over everything to such corporation, but after discussion, it was decided that the corporation should retain its accounts receivable." Will you explain the reason for the change from the arrangement whereby the accounts receivable would have been transferred to the partnership to the arrangement finally made, whereby the accounts receivable were retained by the corporation?

A. Well, in the first place, the accounts receivable represented a sufficient amount to pay the accounts payable and certain notes of the mill aside from the mortgage, so there would be sort of an automatic washout in the course of the next month or two or three but that was why it was possible rather than the reason—now, amongst these accounts receivable were certain accounts which were doubtful whether they were good in whole or in

(Testimony of F. M. Roberts.)

part or whether there would be some shrinkage in them and we felt that if we turned those [14] accounts over to the partnership at their face amount, the partnership would then show a loss on those accounts and we would be subject to criticism by any Income Tax Department for having a loss—really should have been a loss of the corporation—on the other hand, if we felt—if we tried to estimate a discount on them, it would be equally as bad—and in addition to that, there was one account written off at the end of 1932 and it was possible there would be some recoveries in that account and we felt that if there were recoveries in that account, it should be recoveries for the corporation and not for a partnership, which could place no value on it. This was the account of the Bennett Box Factory and everything had been sold except their plant, and seemed to be in the midst of the depression, no market whatever for it, and expense of upkeep.

Q. Do I understand the sum total of your testimony, in response to the last question was to avoid any complaint on the part of the Income Tax Department, you didn't transfer the accounts receivable?

Mr. Winter: I object to the form of the question.

The Court: It is too leading. Objection sustained.

Q. Will you sum up the reason for not transferring the accounts receivable with the tangible assets?

(Testimony of F. M. Roberts.)

A. I think I did sum it up; it was to avoid, as we thought, the criticism on the part of the Income Tax Department but apparently——

Q. Mr. Roberts, upon the conclusion of the trustees' [15] meeting of that day, did you hold a stockholders' meeting? A. Yes.

Mr. Shefelman: I will offer in evidence, as in the case of the Minutes of the trustees' meeting, as Plaintiff's exhibit No. 3, in this case, the Minutes of the stockholders' meeting of June 30th, 1933.

Mr. Winter: No objection.

The Court: Admitted.

Plaintiff's exhibit No. 3, last above mentioned, admitted in evidence.

PLAINTIFF'S EXHIBIT NO. 3

Stockholders' Meeting

Bryn Mawr, Washington

June 30, 1933.

A special meeting of the shareholders of the Seattle-Renton Lumber Co. was held at the mill on the above date, the following stock being personally represented:

C. A. Shinstrom.....	100 shares
James C. Carlson.....	230 shares
F. M. Roberts.....	212 shares
James P. Weter.....	222 shares.

(Testimony of F. M. Roberts.)

The call for the meeting was read, and it was then stated that a quorum was present.

The Secretary then read to the stockholders the minutes of a meeting of the Trustees which had just been held, said minutes setting forth a resolution of the Trustees under which the real estate and all tangible personal property of the mill, a corporation, was to be sold to a partnership composed of the stockholders in the mill, the partners to contribute to the new partnership the dividends received from the mill. After reading the said minutes, it was moved, seconded and carried that the action of the Trustees in selling the mill property and in the declaration of a dividend be approved. The same received the unanimous vote of all stock represented at the meeting.

On motion the meeting adjourned.

F. M. ROBERTS

Secretary

[Endorsed]: Admitted Jan. 23, 1939.

Mr. Shefelman: (Reads Plaintiff's exhibit No. 3 to the Court.)

Q. Did you, on that date, execute any instruments transferring the title to the real or personal property from the corporation to the partnership?

A. We executed a bill of sale of the personal property from the corporation to the partnership. (If you are looking for them, they are in my file, I think.)

(Testimony of F. M. Roberts.)

Q. You have them with you? A. Yes.

Q. Will you be kind enough to let me have them so I can have them marked if you will?

A. (Handing document to Mr. Shefelman.)

Q. Showing you what has been marked for identification Plaintiff's exhibit No. 4, I will ask you what that instrument is, Mr. Roberts?

A. That is a conveyance from the Seattle Lumber Company, the corporation to myself, of the mill site.

Q. Bearing the date, June 30th, 1933? [16]

A. Yes.

Mr. Shefelman: I will offer that in evidence.

Mr. Winter: No objection.

The Court: Admitted.

Plaintiff's Exhibit No. 4, last above referred to, admitted in evidence.

PLAINTIFF'S EXHIBIT No. 4

2881250

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The Grantor, Seattle Renton Lumber Co., a Corporation duly organized and existing under and by virtue of the laws of the State of Washington and duly authorized to do business in the State of Washington, for and in consideration of Forty Thousand Dollars, of which Twenty Thousand Dollars is by the assumption of the hereinafter described mortgage, in hand paid, conveys and warrants to F. M. Roberts the following described Real

(Testimony of F. M. Roberts.)

Estate: Block "B" of Lake Washington Shore Lands as modified in Cause No. 156371 of the Superior Court of King County, Washington, in the County of King, State of Washington; Also Beginning at the intersection of the Easterly line of the Seattle Renton and Southern Right of Way with a line 2 feet South of the North line of Lot 1 in Block 27 of Bryn Mawr, in the County of King and State of Washington, as per map thereof recorded in Volume 5 of Plats, page 58, in the office of the County Auditor of said County; thence Southeasterly along said Easterly line of Seattle Renton and Southern Right of Way to the intersection of the Southerly line of Juniper Street (Keats Avenue) as shown on said plat (now vacated); thence East along the South line of said street to the West margin of Black River Waterway as established in Cause No. 156371 of the Superior Court of King County, Washington; thence North $2^{\circ}40'09.5''$ East along the West margin of said waterway to a point South $88^{\circ}27'28''$ East of the point of beginning; thence North $88^{\circ}27'28''$ West to the point of beginning. Situated in the County of King, State of Washington.

Dated this 30th day of June 1933.

In Witness Whereof, The said Grantor, a corporation, has caused these presents to be subscribed by its President, and its corporate seal to be

(Testimony of F. M. Roberts.)

hereunto affixed and attested by its Secretary, the day and year first above written.

[Seal] SEATTLE RENTON LUMBER
CO.

By JAS. C. CARLSON
Its President.

Attest:

.....
By F. M. ROBERTS
Its Secretary.

State of Washington,
County of King—ss.

On this 30th day of June, A. D. 1933, before me personally appeared James C. Carlson and F. M. Roberts to me known to be the President and Secretary, respectively of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] MIKE COPASS
Notary Public in and for the State of Washington,
residing at Seattle.

(Testimony of F. M. Roberts.)

2881250. Warranty Deed. By Corporation. From Seattle Renton Lumber Co. to F. M. Roberts. Filed for Record at Request of (Mail) Weter, Roberts & Shefelman, 1612 Northern Life Tower.

[Endorsed]: Admitted Jan. 23, 1939.

Q. What date was this instrument actually executed? A. June 30th, 1933.

Q. And that is signed by Mr. Carlson, President, and you as Secretary? A. Yes.

Q. Yourself, individually? A. Yes.

Q. What date was it acknowledged?

A. The same date.

Q. Why was the title to the real property taken in your individual name, Mr. Roberts?

A. Well, at our meeting we discussed how it should be transferred and I made the suggestion it go into Mr. Carlson's name for the benefit of the partnership; he said he thought it ought to go into mine; it was transferred into my name, I taking the title, however, for the benefit of the partnership.

Q. Showing you what is marked as Plaintiff's exhibit No. 5 for identification, what is that?

A. That is a bill of sale from the Seattle Renton Lumber Company to the Seattle Renton Mill Company, a partnership, of the machinery and equipment, trucks, Ford car, office furniture, lumber, logs and supplies at the [17] mill.

Q. Executed on what date?

(Testimony of F. M. Roberts.)

A. The 30th of June 1933.

Q. And delivered on what date?

A. The same day.

Q. Does it bear acknowledgement?

A. Yes.

Q. What date was the instrument acknowledged?

A. Yes.

Q. What date, acknowledged?

A. The same day that it was delivered to me.

Mr. Shefelman: I will offer the instrument in evidence.

The Court: Admitted.

Plaintiff's exhibit No. 5, the instrument just referred to, admitted in evidence.

PLAINTIFF'S EXHIBIT No. 5

Know All Men by These Presents:

That Seattle Renton Lumber Co., a corporation the party of the first part, for and in consideration of the sum of Ninety Eight Thousand Six Hundred Sixty Two and 56/100 Dollars, lawful money of the United States of America to it in hand paid by Seattle Renton Mill Co., a partnership, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, its successors and assigns all machinery and equipment contained in or about the mill building and premises of the grantor at Bryn

(Testimony of F. M. Roberts.)

Mawr, Washington, together with two Mack trucks, one Ford coupe, one power boat "Peacock", office furniture and equipment, and all lumber, logs and supplies on hand at the said mill premises. The intention of this bill of sale is to pass title to all tangible personal property of the vendor, but including no intangible personal property of any nature or description.

To Have and to Hold the same to the said party of the second part, its successors and assigns forever. And the said grantor does for its successors and assigns, covenant and agree to and with the said party of the second part, its successors and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said party of the second part, its successors and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, we have hereunto set our hands and seals the 30 day of June in the year of our Lord one thousand nine hundred and thirty-three.

Signed, Sealed and Delivered in Presence of
[Seal] SEATTLE RENTON LUMBER
CO.

[Seal] By JAS. C. CARLSON
Pres.

[Seal] And By F. M. ROBERTS
Sec.

(Testimony of F. M. Roberts.)

State of Washington,

County of King—ss.

On this 30th day of June, A. D. 1933 before me personally appeared James C. Carlson and F. M. Roberts to me known to be the President and Secretary, respectively, of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] MIKE COPASS

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Admitted Jan. 23, 1939.

Q. Will you tell me why the bill of sale runs to the Seattle Renton Mill Company, a partnership, while the deed to the real property runs to yourself, individually?

A. Well, we felt that—of course, I think it takes no explanation, why the bill of sale runs to the partnership—the explanation would be why

(Testimony of F. M. Roberts.)

the deed ran to me; we felt we were a closely united and related group and if we had it in the name of the partnership, had the real estate, there might be probate proceedings, which possibly could be avoided in the event of the death of someone.

Q. Showing you what is marked for identification Plaintiff's exhibit No. 6, I will ask you what that instrument is? [18]

A. That is a declaration of trust that I executed at the time in connection with the same transaction.

Q. That was executed on what date?

A. The 30th of June 1933.

Q. And acknowledged on what date?

A. The same day, I feel sure.

Mr. Shefelman: I will offer Plaintiff's exhibit No. 6, in evidence.

Mr. Winter: No objection.

The Court: Admitted.

Plaintiff's exhibit No. 6, the declaration of trust last above referred to, admitted in evidence.

PLAINTIFF'S EXHIBIT No. 6

DECLARATION OF TRUST

I, F. M. Roberts, do hereby acknowledge that I have this day received a conveyance from the Seattle Renton Lumber Co. of the following de-

(Testimony of F. M. Roberts.)

scribed real estate situated in King County, Washington, towit:

Block "B" of Lake Washington Shore Lands as modified in Cause No. 156371 of the Superior Court of King County, in the County of King, State of Washington; Also

Beginning at the intersection of the Easterly line of the Seattle Renton and Southern Right of Way with a line 2 feet South of the North line of Lot 1 in Block 27 of Bryn Mawr, in the County of King, State of Washington, as per map thereof recorded in Volume 5 of Plats, page 58, in the office of the County Auditor of said County; thence Southeasterly along said Easterly line of Seattle Renton and Southern Right of Way to the intersection of the Southerly line of Juniper Street (Keats Avenue) as shown on said plat (now vacated); thence East along the South line of said street to the West margin of Black River Waterway as established in Cause No. 156371 of the Superior Court of King County, Washington; thence North $2^{\circ}40'09.5''$ East along the West margin of said waterway to a point South $88^{\circ}27'28''$ East of the point of beginning; thence North $88^{\circ}27'28''$ West to the point of beginning.

I further acknowledge that I received said conveyance in trust for the following named persons in the following proportions:

(Testimony of F. M. Roberts.)

James C. Carlson.....	230/900
James P. Weter.....	211/ “
C. A. Shinstrom.....	100/ “
R. C. Swan.....	10 “
Estelle Roberts	26 $\frac{2}{3}$ “
Helen R. Shinstrom.....	26 $\frac{2}{3}$ “
J. M. Roberts.....	19 “
Edith S. Roberts.....	37 “
Ruth Roberts..	1 “
Mary Roberts	1 “
For myself	237 $\frac{2}{3}$ “

I further declare that I have taken said title at the request of the persons interested in said real estate, who are partners as the Seattle Renton Mill Co., for the reason that it would be cumbersome to have the title to said real estate in the names of all of the said persons. I hereby agree to be bound by the decision of the said persons for whom I hold title in trust, as to the handling of the said title, and agree upon request to convey the same to them, or to any other person to whom I shall be directed to make conveyance. I further declare that I have no interest in said property except only the interest as set forth in this Declaration of Trust.

In Witness Whereof, I have hereunto set my hand this 30th day of June, 1933.

[Seal] F. M. ROBERTS

State of Washington
County of King—ss.

This Certifies that on this 30th day of June, 1933, personally appeared before me F. M. Roberts,

(Testimony of F. M. Roberts.)

to me known to be the individual who executed the foregoing instrument, and acknowledged same as his free act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] MIKE COPASS

Notary Public in and for the State of Washington,
residing at Seattle

[Endorsed]: Admitted Jan. 23, 1939.

A. I would like to add that these were worked out ahead of the 30th.

Q. And simply signed and delivered on that day?

A. I couldn't tell you whether the typing was done on that day or before—I know they were all worked out, the whole thing, in advance.

Mr. Shefelman: I would like to read, without including the description, the pertinent part of this declaration of trust. (Reads from Plaintiff's exhibit No. 6 to the Court.)

Q. I notice, Mr. Roberts, that on each of these instruments the Notary Public is Mike Copass, who is Mr. Copass?

A. He is a lawyer in our office, employe of the office.

Q. He is still with us at this time?

A. Yes.

Q. And was on June 30th, 1933?

A. Yes. [19]

(Testimony of F. M. Roberts.)

Q. Your declaration of trust has never been recorded, has it, Mr. Roberts? A. No.

Q. And that is also true of the bill of sale?

A. That is true.

Q. I notice, however, the King County Auditor's stamp mark showing the recording of the warranty deed to yourself as of January 2d, 1936, will you explain, if you will, how the deed happened to be recorded?

A. Well, that was after all of this controversy arose and we had been compelled to pay income tax for the year 1933,—I guess by that time paid a corporate income tax for the year 1939, during which year the Government still maintained that we were operating as a corporation and I think we had then had our review, I don't know whether we had or not, for the succeeding year, but it became evident that they were adhering to the position, so it seemed advisable to take certain steps to cure what were their objections, and at that time we even changed the form of our partnership and this was recorded at that time.

Q. Their objection being what, with reference to the matter of recording?

A. The fact that the instruments had not gone on record.

Q. What effect did they say that had upon the existence of the partnership?

Mr. Winter: If the Court please—

The Court: Objection sustained, until it is stated who raised the objection.

(Testimony of F. M. Roberts.)

Q. Did you, at the time of the meeting, which was held [20] on June 30th and when these instruments were executed, have anybody at the mill prepare a complete financial statement and profit and loss statement of the corporation as of June 30th, 1933?

A. Yes, Mr. Dougherty, the bookkeeper.

Q. Where do you keep that?

A. A copy was in the Minute Book; it has always been loose in the Minute Book; there are other copies at the mill.

Q. Showing you what is marked for identification, Plaintiff's exhibit No. 7, I will ask you what that is?

A. Well, that is a full statement of the financial situation of the Company at that time; the first page, profit and loss statement for the six months ending June 30th.

Mr. Winter: It appears from the witness's own testimony he had someone else prepare it.

Mr. Shefelman: He is Secretary of the corporation.

The Court: It was prepared at that time, you saw it?

A. I assisted, as a matter of fact, in its preparation; Mr. Dougherty was, primarily, responsible.

Mr. Winter: I didn't so understand.

The Court: Is it offered?

Mr. Shefelman: I will offer it at this time.

The Court: Admitted.

Plaintiff's exhibit No. 7, the statement just referred to, admitted in evidence.

(Testimony of F. M. Roberts.)

PLAINTIFF'S EXHIBIT No. 7

Telephone-Seattle Exchange
Rainier 5990

James C. Carlson
Manager

SEATTLE-RENTON LUMBER COMPANY
Manufacturers of Douglas Fir Lumber
Bryn Mawr, Washington

PROFIT & LOSS STATEMENT
June 30, 1933

	Losses	Gain	Assets	Liab.
First Natl. Bank of Kirkland.....			831.49	
Cash.....			344.75	
Accts. Rec.....			15,682.88	
Notes Rec. Norman & Booth.....			1,109.50	
Notes Rec.....			700.00	
Inventory—Lumber 6/30/33.....			8,627.23	
Inventory—Logs 6/30/33.....			7,734.94	
Inventory—Supplies 6/30/33.....			55.00	
Boat Acct. "Peacock".....			1,773.12	
Real Estate.....			30,000.00	
Plant & Equip.....			101,763.64	
Office Equip.....			580.48	
Roadway.....			1,701.07	

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)
PROFIT & LOSS STATEMENT (Continued)

	Losses	Gain	Assets	Liab.
New Mack Truck.....			5,500.00	
Old Mack Truck.....			345.00	
Ford Coupe.....			669.00	
Lumber Sales.....		54,423.87		
Hog Fuel Sales.....		1,644.50		
Wood Sales.....		2,043.40		
Discount Rec.....		728.22		
Cabin Rentals.....		671.16		
Recovery for Bad Accounts.....		86.95		
Depreciation Reserve.....				16,701.13
Accts. Payable—Current Bills.....				2,462.75
Bills Payable—Notes.....				31,000.00
Capital Stock.....				90,000.00
Surplus.....				32,500.00
Logs Purchased.....	30,479.38			
Wages—Mill Labor.....	9,733.65			
Salaries.....	2,024.50			
Ind. Ins. & Med. Aid.....	372.23			
General Tele. & Office Exp.....	203.60			
Repairs & Mill Operation.....	3,415.53			

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

PROFIT & LOSS STATEMENT (Continued)

	Losses	Gain	Assets	Liab.
Power & Light.....	2,488.72			
Insurance.....	1,039.17			
Taxes.....	472.98			
Interest Paid.....	826.14			
Discount Allowed.....	913.41			
License.....	105.50			
Misc. Incidentals.....	13.28			
	<hr/>	<hr/>	<hr/>	<hr/>
Profit & Loss 1932.....	52,088.09	59,598.10	177,418.10	172,663.88
			2,755.79	
Depreciation 1933, 6 Mos.....	3,385.79			
Gain, 6 Mos. 1933.....	4,124.22			7,510.01
	<hr/>	<hr/>	<hr/>	<hr/>
	59,598.10	59,598.10	180,173.89	180,173.89

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

Telephone-Seattle Exchange
RAimier 5990

James C. Carlson
Manager

SEATTLE-RENTON LUMBER COMPANY
Manufacturers of Douglas Fir Lumber
Bryn Mawr, Washington

LOGS CUT & LUMBER SOLD
6 Mos., January 1 to June 30, 1933

	Lumber	Logs
January	1,160,931'	722,695'
February	1,051,322'	376,510'
March	701,024'	819,230'
April	866,856'	628,744'
May	780,506'	622,850'
June	1,058,967'	1,125,406'
	<hr/>	<hr/>
Less Purchases	5,619,606'	Total 4,335,435'
		± Inv 1/1/33 375,000'
	<hr/>	<hr/>
	5,499,650'	4,710,435'

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

Telephone-Seattle Exchange
Rainier 5990

James C. Carlson
Manager

SEATTLE-RENTON LUMBER COMPANY

Manufacturers of Douglas Fir Lumber
Bryn Mawr, Washington

ACCOUNTS RECEIVABLE

June 30, 1933

Associated Oil Co.....	\$ 30.72
Axelson Box Co.....	348.14
Blackstock Lumber Co.....	67.10
Booth Bros.	813.59
Buckinger, J. P.....	1.56
Brace Lumber Co.....	278.97
Colby & Dickinson.....	1,452.65
Columbia Lumber Co.....	2,870.23
Cottage Lake Lumber Co.....	621.30
Alex Cugini	168.77
Cascade Machy. Co.....	27.26
John Dower Lumber Co.....	879.41
Elliott Bay Lumber Co.....	2,370.65
Employees	26.62
Foster Lumber Co.....	194.11
Home Oil Co.....	26.99
Jennings, H. L.....	65.27
King County	19.01
Lakewood Boat House.....	65.00
Lockwood Lumber Co.....	1,920.03
Meade Lumber Co.....	16.00
Miller, Ed	1.14
Nettleton Lumber Co.....	27.13
Norman Fuel Co.....	82.50
Pacific Lumber Agency.....	256.50
Pacific Car & Fdry. Co.....	122.28
Puget Sound Lbr. Mfg. Co.....	21.88
Puget Sound Mch. Depot.....	22.74
Rich Lumber Co.....	1,527.41

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

Savage Lumber & Mfg. Co.....	\$ 729.11	
Snyder, C. C.....	33.60	
Sunset Tug & Barge Co.....	28.56	
Triangle Fuel Co.....	228.96	
West Coast Fuel Co.....	9.00	
Wire Rope Mfg. & Equip. Co.....	128.69	
Bal. per Ledger		\$15,682.88
	<hr/>	<hr/>
	\$15,682.88	\$15,682.88
	<hr/>	<hr/>

ACCOUNTS PAYABLE

Accounts Payable—Current Bills.....	\$ 1,294.65
Ind. Ins. & Med. Aid.....	131.34
Pay Roll—Mill Labor.....	1,036.76
	<hr/>
Bal. per Ledger	2,462.75

Telephone-Seattle Exchange
Rainier 5990

James C. Carlson
Manager

SEATTLE-RENTON LUMBER COMPANY

Manufacturers of Douglas Fir Lumber

Bryn Mawr, Washington

TRIAL BALANCE

June 30, 1933

	Debits	Credits
First Natl. Bank of Kirkland.....	\$ 831.49	
Cash	344.75	
Accounts Rec.	15,682.88	
Notes Receivable, Booth & Norman....	1,109.50	
Notes Receivable, J. C. C.....	700.00	
Inventory, Lumber, 6/30/33.....	8,627.23	
Inventory, Logs, 6/30/33.....	7,734.94	
Inventory Supplies, 6/30/33.....	55.00	
Boat Acct. "Peacock".....	1,773.12	
Real Estate	30,000.00	
Plant & Equip.....	101,763.64	
Office Equip.	580.48	

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

	Debits	Credits
Roadway	\$ 1,701.07	
New Maek	5,500.00	
Old Maek	345.00	
Ford Coupe	669.00	
Lumber Sales		54,423.87
Hog Fuel Sales.....		1,644.50
Wood Sales		2,043.40
Recovery for Bad Accounts.....		86.95
Discount Received		728.22
Cabin Rentals		671.16
Accounts Payable—Current Bills.....		2,462.75
Bills Payable		31,000.00
Capital Stock		90,000.00
Surplus		32,500.00
Depreciation Reserve, 1932.....		16,701.13
Logs Purchased	30,479.38	
Wages—Mill Labor	9,733.65	
Salaries	2,024.50	
Ind. Ins. & Med. Aid.....	372.23	
General, Telephone & Office Expence..	203.60	
Repairs & Mill Operation.....	3,415.53	
Power & Light.....	2,488.72	
Insurance	1,039.17	
Taxes	472.98	
Interest Paid	826.14	
Discount Allowed	913.41	
Lieenses, Trucks & Ford.....	105.50	
Misc. Incidentals	13.28	
Profit & Loss.....	2,755.79	
Depreciation, 1933—6 Mos.....	3,385.79	
Reserve for Depreciation.....		3,385.79
	<hr/>	<hr/>
	\$235,647.77	235,647.77
	<hr/>	<hr/>

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

Telephone-Seattle Exchange
 RAinier 5990

James C. Carlson
 Manager

SEATTLE-RENTON LUMBER COMPANY

Manufacturers of Douglas Fir Lumber

Bryn Mawr, Washington

June 30, 1933

STATEMENT OF COSTS OF MANUFACTURE
 & RECEIPTS

6 Mos. ending June 30

Income

		Per M
Lumber Sales	\$54,423.87	10.85
Hog Fuel Sales.....	1,644.50	.33
Wood Sales	2,043.40	.41
Discount Received	728.22	.14
Cabin Rentals	671.16	.13
Recovery for Bad Accts.....	86.95	.02
	<hr/>	<hr/>
	59,598.10	11.88
	<hr/>	<hr/>

Expense

Logs Purchased	\$30,479.38	6.08
Wages—Mill Labor	9,733.65	1.94
Salaries	2,024.50	.40
Ind. Ins. & Med. Aid.....	372.23	.07
General & Office Expense.....	203.60	.04
Repairs & Mill Operation.....	3,415.53	.68
Power & Light.....	2,488.72	.50
Insurance	1,039.17	.21
Taxes	472.98	.10
Interest Paid	826.14	.16

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 7 (Continued)

Expense		Per M
Discount Allowed	\$ 913.41	.18
License	105.50	.02
Misc. Incidentals	13.28	—
Depreciation, 6 Mos. 1933.....	3,385.79	.68
	<hr/>	<hr/>
	55,473.88	11.06
Gain, 6 Mos. 1933.....	4,124.22	.82
	<hr/>	<hr/>
	59,598.10	11.88
	<hr/>	<hr/>

[Endorsed]: Admitted Jan. 23, 1939.

Mr. Winter: May I ask a few questions on the exhibit of the witness? [21]

Mr. Shefelman: No objection.

Cross Examination

By Mr. Winter:

Q. Did you prepare this prior to June 30th, 1933?

A. No, it was finally closed on June 30th, instructions were the books were to be gotten together so it would be closed as a last minute proposition.

Q. When was it prepared? A. June 30th.

Q. It was finally prepared——?

A. (Interrupting) I don't think I had it in type-written form at that time, but we had the figures altogether, I presume the actual typed sheet didn't reach me until another day or two.

(Testimony of F. M. Roberts.)

Mr. Winter: I object to this as irrelevant and immaterial, prepared after June 30th, the figures, he might have had the figures there, some other figures, this wasn't prepared until after; it is an attempt to show as to the balance as to that date; if it is only for that purpose, what the books would show——

The Court: (Interrupting) Overruled.

Mr. Winter: Exception.

The Court: Allowed.

The books are available for Mr. Winter's examination?

Mr. Shefelman: We brought them all into Court, they are all here.

Mr. Winter: We don't contend that this wouldn't be a balance sheet as of June 30th, of the [22] books, as to the figures, the only objection I was making it was prepared after June 30th.

Mr. Shefelman: I don't think you quite understood the witness's answer, Mr. Winter, as perhaps I didn't and I will ask Mr. Roberts——

Direct Examination

(Continued)

By Mr. Shefelman:

Q. You have heard Mr. Winter's statement this was prepared after June 30th, 1933, will you tell us just when it was prepared?

A. Well, the figures, in pen or pencil shape, were prepared there on June 30th, 1933, but the typing wasn't done until the succeeding two or three days.

(Testimony of F. M. Roberts.)

Q. The first page of this contains your profit and loss statement, does it not, Mr. Roberts?

A. Yes.

Q. And your second, shows logs cut and lumber sold during the first six months, 1933?

A. Yes.

Q. Third, your accounts receivable?

A. And payable.

Q. What was the total amount of the accounts receivable and payable of the corporation as of June 30th, 1933?

A. Accounts receivable, \$15,682.88; the accounts payable, including accrued labor and industrial insurance were \$2,462.75. I think I should add, however, that there were bills payable, that is notes payable at that time of the \$20,000.00 mortgage, which the partnership assumed, an additional \$10,000.00 of notes, so that the [23] total debts remaining with the corporation would have been \$12,462.75, against accounts receivable of \$15,682.88.

Mr. Winter: Was that \$10,000.00 or \$11,000.00, notes payable in addition to mortgages payable?

A. \$11,000.00, yes, and that, of course, changes my total payables to \$13,462.75.

Q. Against \$15,000.00 receivables?

A. Yes, I looked at the real estate figure instead of the bills payable.

Q. You speak of notes payable, \$11,000.00, whom was that owed to?

(Testimony of F. M. Roberts.)

A. Well, without seeing the book, I couldn't give you the exact distribution of it.

Q. In general, as nearly as you can recall?

A. As nearly as I recall, was a note payable, First National Bank at Kirkland, note payable to the Orting State Bank of which I am President, a note payable to the daughter of the Cashier of the Orting State Bank and I think the balance of it was payable to me or to Mr. Weter and me in the office.

The Court: The trial will be interrupted at this point and resumed at 2:00 o'clock this afternoon, and Court is at recess until that time.

(Adjournment) [24]

Monday Afternoon Session

January 23d, 1939

2:00 o'Clock

All present and proceedings continued as follows:

F. M. ROBERTS

resumes the stand.

Direct Examination

(Continued)

By Mr. Shefelman:

Q. Following the change of June 30th, 1933, Mr. Roberts, was any change made in any bank

(Testimony of F. M. Roberts.)

account or any new bank account opened for the partnership?

A. A new bank account opened for the partnership, no change in the old one.

Q. Where?

A. First National Bank at Kirkland.

Q. You are now and were then, also, President of that Bank? A. Yes.

Q. Have you procured from the Bank any signature cards pertaining to the account of the partnership?

A. I have. (Handing to Mr. Shefelman, cards.)

Q. Had the lumber company had its account with the Kirkland Bank? It is also a corporation?

A. Yes.

Q. And signature cards had been filed from time to time by the corporation, I judge?

A. Yes. [25]

Q. Showing you what has been marked for identification Plaintiff's exhibit No. 8, what is that?

Mr. Winter: (Interrupting) There is no objection to the introduction of those signature cards into evidence, to save time.

Mr. Shefelman: Plaintiff's exhibit No. 8 is the signature card, of the Seattle Renton Company with the First National Bank, dated August 16th, 1932.

The Court: Admitted.

Plaintiff's exhibit No. 8, last above referred to, admitted in evidence.

(Testimony of F. M. Roberts.)

off

PLAINTIFF'S EXHIBIT No. 8

Below please find signature (s) which you will recognize in payment of funds or the transaction of other business on my (or our) account with The First National Bank of Kirkland, Kirkland, Wash.

Seattle-Renton Lumber Co.

Signature of F. M. Roberts, Secy. or Jas. C. Carlson, Pres. or V. Dougherty, Treas.

Address. Introduced by.

Date Aug. 16, 1932.

introduction

[Endorsed]: Admitted Jan. 23, 1939.

introduction

Mr. Shefelman: May I show that shows the authorized signatures of F. M. Roberts, Secretary, or James C. Carlson, President, or V. Dougherty, and underneath the word "Treasurer."

A. I think I should offer an explanation as to "Treasurer." Mr. Dougherty is not the Treasurer and that is in my writing, both the words "Secretary, President and Treasurer" on that card, in my writing, I don't know anything about when I wrote them. We contemplated Mr. Dougherty, one time, buying stock, and being made Treasurer. That is his signature on it, but he was never made treasurer.

Q. It is his signature on the card?

A. Yes.

(Testimony of F. M. Roberts.)

Q. Has his signature on the checks, been on them? A. Yes.

Q. What official position does he hold with the corporation?

A. Simply bookkeeper at the mill, no corporate office. [26]

Mr. Shefelman: I shall offer in evidence as Plaintiff's exhibit No. 9 a signature card of the Seattle Renton Mill Company with the First National Bank of Kirkland, dated July 3d, 1933.

The Court: Admitted.

Plaintiff's exhibit No. 9, the signature card last above referred to, admitted in evidence.

PLAINTIFF'S EXHIBIT No. 9

Below please find signature (s) which you will recognize in payment of funds or the transaction of other business on my (or our) account with The First National Bank of Kirkland, Kirkland, Wash.

Seattle Renton Mill Co.

Signature of By Jas. C. Carlson or By F. M. Roberts or By V. Dougherty.

Address Bryn Mawr, Wn.

Introduced by

Date Jul. 3, 1933.

Seattle Renton Mill Co.

[Endorsed]: Admitted Jan. 23, 1939.

(Testimony of F. M. Roberts.)

Q. The signature card I just have referred to of the partnership shows that signature are to be on it, by James C. Carlson, no corporate office designated, or F. M. Roberts, or V. Dougherty, without any corporate designation whatever. That is dated July 3, 1933. Mr. Roberts, did the persons at the mill take any steps immediately following this change of June 30th, 1933, to change the name from the Seattle Renton Lumber Company to the Seattle Mill Company on any signs or stationery or anything?

A. Yes, there was a large sign on the mill which was repainted, I think, within a very few days afterwards, I think there were signs on the trucks and car or truck and car, I have forgotten whether two then, which were painted over and the new name put on; we got a rubber stamp, I think, within a day or two, perhaps even had it then, in which the sales' slips—a rubber stamp that made a bar through "lumber" and printed "Mill" over, or above, it, and a similar rubber stamp used on the stationery until new was printed.

Q. You stated this morning that the corporation owed some money on notes outstanding on June 30th, 1933. Do you [27] know now to whom that money was owed?

A. I gave the names in my testimony this morning. I looked at the book afterwards, I omitted the First National Bank at Redmond; otherwise, I was correct.

(Testimony of F. M. Roberts.)

Q. The persons to whom the money was owed were the Banks at Redmond and Kirkland—that is the corporation owed this money? A. Yes.

Q. Who else?

A. The Orting State Bank, Virginia Stone and to myself.

Q. Briefly, you are the President of each of those three banks? A. Yes.

Q. The other persons associated, likewise connected with one of the banks?

A. Virginia Stone is the daughter of the Vice President of the Bank, he knew about this change, I told him about it.

Mr. Winter: That is the only people you owed money to?

Q. On notes, you had some accounts payable, at that time, \$1200.00?

A. It is my impression, around \$2400.00 or \$2500.00.

Q. Were those persons creditors in the sense the corporation would owe them money for any period of time?

A. No, the corporation had always discounted all its bills on the 10th of the month, following the date of purchase. These accounts, \$1,000.00 odd dollars, was labor and, I think, roughly, \$1200.00 or \$1300.00 supply firms. [28]

Q. Those accounts payable were paid up within—?

A. (Interrupting) Within ten days, paid on the

(Testimony of F. M. Roberts.)

10th, that was always the custom, I know, at this time.

Q. Has your mill, either run by the corporation or partnership, done a credit business, on a credit basis? A. Not on its purchases.

Q. That is, you have sold——?

A. (Interrupting) Sold on credit, not bought, excepting just waiting the first of the month bill.

Q. You have taken your cash discounts within 10 days?

A. Always, through all the time.

Q. Has anybody except the partnership operated the mill since June 30th, 1933?

A. No one else.

Q. Has the corporation engaged in any business since June 1933 other than liquidating its accounts? A. That is all.

Q. Did the corporation assign this \$20,000.00 note and mortgage, which was still in existence June 30th, 1933?

A. To the best of my recollection, they did.

Q. That was a mortgage on the real estate?

A. Pure money mortgage on what was then a vacant tract of ground.

Q. Which the partnership assumed?

A. Yes.

Q. The mortgagee didn't sign a release?

A. No, he didn't release the corporation.

Mr. Shefelman: That is all, if the Court please.

(Testimony of F. M. Roberts.)

Cross Examination

By Mr. Winter:

Q. Mr. Roberts, was there any necessity for changing the form of the organization of the corporation to a partnership except to avoid, as you say, income tax on the corporate earnings?

A. That was the purpose.

Q. You had no other reason for doing it?

A. No reason.

Q. Who was the active manager of the corporation prior to June 30th, 1933?

A. Mr. Carlson.

Q. He was paid a salary? A. Yes.

Q. Did he receive a salary from the so-called partnership after June 30th, 1933?

A. Yes, he was paid.

Q. Was that salary, approximately, the same salary paid after? A. Yes.

Q. And he was still active manager?

A. Yes.

Q. Mr. Dougherty was auditor of the Company prior to June 30th, 1933? A. Yes.

Q. He still continued to be the auditor, signed checks, as he did before, except it was on a different blank check, you said?

A. Except he signed a different name, partnership name, instead of corporation name. [30]

Q. In all cases, did he sign the partnership check? A. Yes, corporation, its bills.

(Testimony of F. M. Roberts.)

Q. Those accounts payable were in ten days after June 30th?

A. Yes, might have been two or three may have hung over, over some dispute or other, I don't think any did, of course he wrote checks that paid those notes.

Q. Wrote checks on the corporate account which was in your bank of which you were President?

A. Yes.

Q. And the account was also kept in your bank under the socalled partnership? A. Yes.

Q. And he still continued to sign them. Did you have occasion to print any new checks, Mr. Roberts? A. Not for some months.

Q. When did you, if you did, order the printing of the checks?

A. I don't know when it was, I know at the mill they ordered some checks, I think it was three months afterwards, something like that.

Q. Now, with the exception of the mere change in name, striking out the word "Lumber" and inserting or putting a bar across the word "Lumber" and putting "Mill" and changing "Lumber" and "Mill" on the plant, what other changes in the organization of the corporation was made — there wasn't any, was there?

A. Well, I don't think of any.

Q. The corporation went on the same?

A. The corporation existed. [31]

Q. It would have been possible, in your opinion,

(Testimony of F. M. Roberts.)

to have reconveyed upon a few days' notice—the so-called partners having agreed, back to the corporation, would it not?

A. The partnership could have sold the mill to the corporation; that wouldn't have had the effect of releasing us from liabilities.

Q. Releasing you from any liability the so-called partnership might have incurred——?

A. (Interrupting) It wouldn't release us.

Q. If you hadn't incurred any obligations, there wouldn't be any liability, would there?

A. No, not if we had conveyed the same day but we incurred a liability the succeeding day.

Q. You were discounting bills in ten days after June 30th, were you not?

A. Yes, we bought our July purchases and then discounted those bills on the 10th of August by check of the partnership.

Q. Did you notify any credit agencies or any of your customers by letter or general letter that the corporation had sold its assets to a partnership?

A. No, there was no general letter went out.

Q. I think you said you did not discuss the formation of the so-called partnership with the minors who were the record owners of stock in the corporation, did you?

A. No, I did not discuss it with any of Mr. Carlson's family except himself.

Q. Did you discuss it with your wife, do you know? A. I did. [32]

(Testimony of F. M. Roberts.)

Q. Who were the stockholders, by the way, of the corporation on June 30th, 1933?

A. Well, I have given them once, I may forget one when I give them again, but, Mr. Carlson, his wife and two——

Q. (Interrupting) Which Carlson was that?

A. James C.

Q. How many shares of stock did he own, as you recall?

A. I wouldn't know except as I went over it with you at the close, I wouldn't trust my recollection, 900 shares from memory, but he owned, as I remember 215, I think that is right.

Q. Mr. Carlson, in the trust agreement there it shows—in the declaration of trust, I should say, it shows the respective interests in the so-called partnership as of J. C. Carlson, 230/900's?

A. Yes, that included the 15 shares which had been out, and his wife and two children, which I had owned myself, he had paid for.

Q. J. C. Carlson, President and Manager, was the stockholder of 215 shares at the time of June 30th?

A. There were 215 shares which stood in his name.

Q. Of record? A. Yes.

Q. Ida, wife of J. C., 5 shares?

A. That is right.

Q. Esther Marian, minor daughter, 5 shares?

A. Yes.

(Testimony of F. M. Roberts.)

Q. Margaret Carlson? A. Yes.

Q. On the trust agreement you acknowledge and received [33] conveyance of trust for J. C. Carlson 230/900's, that includes all that stock?

A. All that stock which he said he was taking over.

Q. And you, as Secretary and Treasurer, you had 211 shares of record?

A. That is approximately it, I wouldn't be sure of my number, I think there are some odd thirds on the end of mine.

Q. Yes, you are right, Mr. Roberts: J. P. Weter had 211 shares? A. Yes.

Q. And C. A. Shinstrom, 100 shares?

A. Yes.

Q. Estate of F. W. Roberts, 80 shares?

A. Yes, I had supposed that that was divided into thirds there, if it wasn't—that went in thirds to Mrs. Shinstrom, Estelle Roberts and myself; I don't remember the date, it wasn't long after my father's death, whether that declaration showed his estate or each of us for thirds——

Mr. Shefelman (Interrupting) Mr. Winter, are you supposed to be reading what the declaration of trust shows?

Mr. Winter: No, I am reading the list of the stockholders as of June 30th, 1933.

Q. When did your father die, Mr. Roberts?

A. I think it was September 1932.

Q. And when was his estate probated?

(Testimony of F. M. Roberts.)

A. Yes.

Q. And you say you, Stella Roberts and Helen Shinstrom? [34]

A. Yes.

Q. Were you the beneficiary of one third of the estate?

A. One third of the residuum of the estate.

Q. Had the estate been probated prior to June 30th, 1933?

A. Yes.

Q. The stock had been distributed to you?

A. There never was a decree of distribution in the estate, it was a non intervention will.

Q. It had never been transferred on the records of the corporation from the estate, had it?

A. I don't know, it was transferred subsequently, if it hadn't been then, I thought it had then—I think it had then been transferred, though I am not sure.

Q. You don't have the stock records here?

A. No, I don't.

Mr. Shefelman: There is no secret about the stock.

Q. Edith S. Roberts, stockholder, 37 shares, is that right?

A. I imagine so, I am not certain as to her exact holdings.

Q. Well, if that was the amount of the interest, 37/900's shown in the declaration of trust, that would be true?

A. Yes.

Q. That is what is shown in the declaration of trust. James P. Weter, 211 shares, he was owner of 211 shares in the corporation?

A. Yes.

(Testimony of F. M. Roberts.)

Q. Rex C. Swan, is that? A. That is it.

Q. 10 shares. [35]

A. That is my recollection.

Q. C. A. Shinstrom 100 shares? A. Yes.

Q. Ruth Roberts 1 share? A. Yes.

Q. Who is Ruth Roberts?

A. My daughter.

Q. How old was Ruth June 30th, 1933, was she of age?

A. She was of age, I can't tell you for certain.

Q. Did you discuss the organization of the partnership with Ruth Roberts? A. Yes.

Q. With your daughter?

A. Yes. If you will permit me? Both of them, I have tried to teach my children something of business and what is done and I have taken great pains with the interests they had to explain things to them.

Q. Who is J. M. Roberts? A. My son.

Q. How old is he? A. Of age.

Q. All three of your children were of age, June 30th, 1933?

A. I think Mary was but she is pretty close to the line, I wouldn't be absolutely certain.

Q. I think you said that you had no written articles of incorporation? A. None.

Mr. Shefelman: Is that articles of incorporation? [36]

Mr. Winter: Articles of partnership.

A. I answered it as you meant it.

(Testimony of F. M. Roberts.)

Q. You testified something about the Bear Creek Corporation? A. Partnership.

Q. Was it ever a corporation? A. No.

Q. How about the corporation of you and Mr. Weter, as a law partnership, that was never a corporation?

A. No, that was a partnership.

Q. How about that partnership you and Mr. Shinstrom and Mr. Roberts had?

A. Mr. Weter.

Q. Mr. Weter and Mr. Shinstrom?

A. Partnership.

Q. As a matter of fact, all partnerships?

A. Partnerships, all I said, I am interested in corporations, too.

Q. Did any of those corporations ever sell their assets to the socalled partnership? A. No.

Q. Your arrangements were a partnership to begin with? A. Yes.

Q. I think I asked you, did the corporation ever send out any notice to any of the creditors, such as they were, outside of the stockholders, of any change of partnership? A. No written notice.

Q. No written notice?

A. No. A financial statement was furnished to the [37] First National Bank of Kirkland, where the business was done and credit information had usually been gotten from the Seattle First National Bank with whom all of our banks and Mr. Weter and I, as a partnership, did business and on in-

(Testimony of F. M. Roberts.)

quiries, we had, we either referred them there or were referred to me and I gave the information.

Q. Did you ever file a notice of, or affidavit of doing business under an assumed name—Section 9976 to 9980, of Remington's Revised Statutes of Washington,—with the County Clerk? A. No.

Q. You contend the partnership was doing business under an assumed name of "Seattle Mill Company"? A. That is correct, it was.

Q. I think you stated, Mr. Roberts, that you had a rubber stamp putting a bar across the "Lumber" and stamping the word "Mill" in your stationery, after June 30th, 1933,—was that immediately after or within two or three days?

A. Well, I don't know just when it was done but it would be my guess it was almost immediately but I may be wrong, but I think it was right away.

Q. You had some new checks printed about November 1933, didn't you? A. Yes.

Q. And on these new checks there were printed "Seattle Renton Mill Company" is that right?

Mr. Shefelman: Will you have that marked for identification if you have the witness testify regarding it? We would like to have it marked. [38]

Mr. Winter: All right.

Q. Now, I will show you, Mr. Roberts, what has been marked for identification Defendant's exhibit 1-A and ask you whether or not that represents—I am not particularly interested in the payee of the

(Testimony of F. M. Roberts.)

check, but I am going to ask you whether that represents the form of check which you had printed and used sometime in November 1933?

A. Yes.

Q. You will notice down in the righthand corner, the words "President" and "Treasurer", and signed, what appears to be V. Dougherty, is that the auditor who you say was authorized to sign checks on behalf of the so-called partnership?

A. Yes.

Q. Was he President or Treasurer of the——?

A. (Interrupting) No, there was no President or Treasurer.

Q. I believe you stated that the word "Treasurer" on the signature card was in error because Mr. Dougherty never was Treasurer of the corporation, is that right?

A. Correct.

Q. So, therefore, he wouldn't be authorized to sign as Treasurer even on the corporate checks issued prior to June 30th, 1933?

A. No, he was authorized to sign without designation.

Q. Did he sign, would you say, in the same manner, except for the difference of the "Seattle Renton Mill Company" and on the other checks "Seattle Lumber Company"?

A. That is true, he continued to do so, both kinds of checks. [39]

Q. Did you use all the checks which you had printed, printed on that form you have, Defendant's exhibit A-1?

(Testimony of F. M. Roberts.)

A. I don't know, I didn't have anything much to do with that part of the business.

Q. I will ask you to look through your——?

A. (Interrupting) I know they used them for a long time, for all I know are still using them, I think they bought quite a lot of these.

Q. The majority of the socalled partners were inactive in this corporation's affairs, were they not?

A. In the partnership affairs?

Q. Yes? A. Yes.

Q. And, also, likewise, inactive in the corporation affairs? A. Yes.

Q. Mr. Carlson has been General Manager down there and has continued to draw approximately the same salary he drew as a corporation?

A. Yes.

Q. Outside of these things you have mentioned, the socalled partnership was operated along practically the same as the corporation except for the change in name, the execution of these instruments, which weren't recorded?

A. Well, I think every corporation and every partnership operates the same except as a corporation, they have corporate minutes and annual elections and one thing and another.

Q. I mean by that, Mr. Roberts, that you used the same [40] records by just continuing on with the same covers but cancelled out the entries and started new entries as a partnership?

A. Well, we used a looseleaf system of book-

(Testimony of F. M. Roberts.)

keeping and looseleaf system and, I guess, they probably were put away in the same covers, I think there are two indices in the same cover, one A to Z for the partnership, one A to Z for the corporation.

Q. The books continue right on, after beginning June 30th of the partnership, the same binders?

A. They don't continue on, the corporate books continue on and a new set of books for the partnership, which happened to be in that same binder, but they could be taken out and put in another binder, today or any day; then there is a reserve binder out of which ledger pages are taken and put in, the big book, which I think has them all together in the same binder, they might as well have been in a box.

Q. Well, your closing balance of your partnership was carried right on as the opening balance of your partnership, was it not?

A. No, sir.

Q. You say it was not? A. It was not.

Q. Would the closing balance of your depreciation reserve, was that carried as your opening balance depreciation reserve on your partnership?

A. It was.

Q. And it was right in the same binder, follows right after in the same books? [41]

A. Separate index in the same binder, yes.

Q. You say, it is a separate index?

A. I think so.

Q. I will ask you to look at the depreciation

(Testimony of F. M. Roberts.)

reserve of the corporation, is that in a separate index?

A. No, it seems not to have been transferred into the other or put in here by mistake, perhaps they are all carried that way, there are two separate indices in here; I assumed, one index A to Z of the partnership, one A to Z of the corporation.

Q. Aren't you referring to the accounts receivable and accounts payable, which were not transferred to the partnership?

A. No, the accounts receivable and payable remained with the corporation and your new trial balance, opened up without any cash, without any accounts payable or accounts receivable,—the other items on it were very similar, they were transferred over bodily, that is the items became the same of the new corporation that they had been, new partnership that they had been with the old corporation.

Q. In other words, a new entry was made, carrying forward the corporation balance in exactly the same in the partnership with the exception of your accounts receivable and your accounts payable and your cash on hand?

A. Yes, as I understand the income tax law, for purposes of depreciation that was necessary to so handle it, your depreciation figures on such a sale had to carry through at the same amount.

Mr. Winter: I think that is all. [42]

(Testimony of F. M. Roberts.)

Redirect Examination

By Mr. Shefelman:

Q. Mr. Winter showed you a ledger, I will show you another ledger, I take it for present purposes you don't wish marked, Mr. Winter?

Mr. Winter: No.

Q. Is this a ledger for the Lumber Company?

A. Yes, I gather that from the dates.

Q. And that is a separate ledger for the Lumber Company, itself, is it not?

A. Well, the first A to Z is—I guess the entire ledger is; there are two alphabets in that one.

Q. This is a separate ledger for the Lumber Company, the corporation? A. Yes.

Mr. Winter: What period of time does that ledger cover?

Q. Mr. Winter asked you if you had transferred back to a corporation, whether there would have been any particular liabilities on the part of the partners—did the partnership in that conveyance, convey to you as trustees, for the sum, the \$20,000.00 mortgage? A. It did.

Q. It was asked you with reference to whether or not you had filed a trade name certificate for the partnership involved in this litigation to which we have made reference, did that partnership have occasion to bring suit against anybody?

A. I don't think it ever brought a suit, I am quite certain it never did. [43]

(Testimony of F. M. Roberts.)

The Court: Except this?

A. This is the corporation.

Q. The words "President" and "Treasurer" appear on that check form shown you by Mr. Winter, as a matter of fact prior to the transfer of the tangible assets of the corporation to the partnership, did Mr. Carlson, as President or you, as Treasurer, have occasion to sign any substantial number of checks on the corporation's account?

A. Oh, I don't believe in all the time it ever existed, I ever signed over a dozen and after Mr. Dougherty came there, I don't think Mr. Carlson signed a dozen.

Q. So the words "President" and "Treasurer" appearing on those forms, wouldn't have covered Mr. Dougherty's signature, anyway? A. No.

Q. Do you happen to have personal knowledge of the way those words appeared on those checks?

A.. No, it is all hearsay.

Q. Mr. Carlson would know about that?

A. He told me he did.

Q. The question was asked whether notice was given to customers, do you know whether or not the persons dealing with the Seattle Renton Mill Company learned through the Company's employes that this was a partnership?

A. By customers you mean purchasers from the Seattle Renton Mill Company?

Q. Purchasers?

A. Yes, that was stamped on the invoices after that, [44] I presume we might be able to find one

(Testimony of F. M. Roberts.)

where they forgot to do it, but we had a form of register, I think they went out in quadruplicate and instructions were to stamp them over.

Q. The Seattle Renton Lumber Company, I understand, the corporation is still in existence today, is it not? A. Yes.

Q. As a matter of fact, had to be for the purpose of this suit? A. Yes, they admit——

Q. (Interrupting) And the Seattle Renton Lumber Company didn't close its account out when the Mill Company account was opened? A. No.

Q. I will show you what is marked for identification Plaintiff's exhibit No. 10 and ask what these are?

A. Well, these are the current invoices for part of the month of June and, apparently, all of the month of July.

Q. Of which year? A. 1933.

Mr. Shefelman: I will offer those in evidence, Mr. Winter, before interrogating further.

The Court: Admitted.

(Plaintiff's exhibit No. 10, the invoices just referred to, admitted in evidence.)

(Testimony of F. M. Roberts.)

PLAINTIFF'S EXHIBIT No. 10

[INVOICE]

Phone
Seattle
RAimier 5990

SEATTLE-RENTON LUMBER CO.

Bryn Mawr, Wash.

No. 07013
Customer's No. 717

Date—6/30/1933

Sold to—John Dower
Address—Renton

Del. to—Your Truck
Tallyman—V. D.

Lin. Ft.	Pieces	Size	Length	Description	Feet	Total Ft.	Price	Amount
4	8x8	18	#1	Com. Rgh. Cedar	144	384	20.00	7.68
3	6x8	12	#1	Com. Fir s4s.	48			
2	4x6	12	#1	Com. Fir s4s.	72			
2	6x6	12	#1	Com. Fir s4s.	168			
4	3x12	14	#1	Com. Fir s4s.	64	496	16.00	7.94
2	4x6	16	#1	Com. Fir s4s.				
								<hr/>
								880
								15.62

JOHN DOWER Lbr.
[Illegible]

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 10 (Continued)

[INVOICE]

Phone
Seattle
Rainier 5990

SEATTLE-RENTON LUMBER CO.

Bryn Mawr, Wash.

No. 07016
Customer's No.

Date—6/30/1933

Sold to—Lockwood Lbr. Co.
Address—Seattle

Del. to—Your Truck
Tallyman—V. D.

Lin. Ft.	Pieces	Size	Length	Description	Feet	Total Ft.	Price	Amount
	500	2x4	14	#1 Com. s4s.		4667	14.00	65.34

Last ticket of June—1933

Outside

KIRK

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 10 (Continued)

[INVOICE]

Phone
Seattle
RAimer 5990

SEATTLE-RENTON MILL CO.
Bryn Mawr, Wash.

No. 07017
Customer's No. 3973

Date—7/1/1933

Sold to—Puget Sound Mch'y. Depot					Del. to—Your Truck			
Address—Seattle					Tallyman—V. D.			
Lin. Ft.	Pieces	Size	Length	Description	Feet	Total Ft.	Price	Amount
	2	4x12	12	#2 Com. Rgh.	96			
	9	—	16	#2 Com. Rgh.	576			
	16	3x12	12	#2 Com. Rgh.	576			
	2	6x6	16	#2 Com. Rgh.	96	1344	12.00	16.13
					—			
					AL WALLACE			

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 10 (Continued)

[INVOICE]

Phone Seattle RAINIER 5990	SEATTLE-RENTON MILL CO. Bryn Mawr, Wash.	No. 07175 Customer's No. Geo
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Date—7/17/1933

Sold to—Rich Lbr. Co. Address—Seattle	Del. to—Your Truck Tallyman—V. D.
--	--------------------------------------

Lin. Ft.	Pieces	Size	Length	Description	Feet	Total Ft.	Price	Amount
6314		1x8		R/L #2 Shiplap.		4209	8.00	33.67

LORTIE

(Testimony of F. M. Roberts.)

Plaintiff's Exhibit No. 10 (Continued)

[DELIVERY RECEIPT]

Phone Seattle Rainier 5990
 SEATTLE-RENTON MILL CO.
 Bryn Mawr, Wash. No. 073??
 Customer's No. 3478

Date—7/31/1933

Sold to—Blackstock Lbr. Co.
 Address—Seattle
 Del. to—F. O. B. Mill
 Tallyman—V. D.

Ltn. Ft.	Pieces	Size	Length	Description	Feet	Total Ft.	Price	Amount
81		4x6	10	#1 Com. s4s.		1620		
For "Outside Fence"								
28		4x4	12	#1 Com. s4s.		448		
						—		
For "Timer Stand"						2068	15.00	31.02

Last Ticket of July 1933

W. J. B.

[Endorsed]: Admitted Jan. 23, 1939.

(Testimony of F. M. Roberts.)

Q. As you examine these invoices for July 1933, which is the first month the partnership was in existence, do you see the change made in the mark, "Seattle Renton [45] Lumber Company"?

A. It seems to be marked out with a pencil up to the 17th of July, marked out with a pencil, the word "Mill" written in, then the rubber stamp begins.

Q. May I just show the Court? (Handing to the Court.) A question was asked you with reference to credit agencies, does the corporation which pays cash, that is taking the 10-day discount on its bills for the accounts payable, normally have occasion to resort to credit agencies?

A. The "resort" is usually by the other people, wanting to know whether they are good or not; I have had numerous inquiries from Dun and Bradstreet's about this and other Companies. As a matter of fact, owing to being President of these Banks, I have very frequent calls from them, I have no recollection of ever, perhaps, giving them a full financial statement of either this corporation or this partnership.

Q. When you have been called, have you told the truth about the matter, Mr. Roberts?

A. I have; I couldn't locate the calls.

Mr. Shefelman: That is all.

(Testimony of F. M. Roberts.)

Recross Examination

By Mr. Winter:

Q. The ledger shown to you by Counsel is the ledger covering accounts payable and receivable of the corporation? A. I expect it is.

Q. Doesn't cover anything else? [46]

A. Doesn't cover the general ledger, this is what we would call accounts payable and receivable ledger, the other books you showed me, was general.

Q. Payable and receivable wasn't sold to this alleged partnership? A. They weren't sold.

Mr. Winter: If the Court please, I think I neglected to offer in evidence or ask to be offered in evidence, Defendant's exhibit A-1, a check.

Mr. Shefelman: No objection.

The Court: Admitted.

Defendant's exhibit A-1, the check just referred to, admitted in evidence.

(Testimony of F. M. Roberts.)

Mr. Winter: I think that is all.

Re-redirect Examination

By Mr. Shefelman:

Q. Mr. Roberts, the question was just asked you whether this ledger to which reference was made, contained anything except accounts payable and receivable of the corporation?

A. I didn't examine the pages.

Q. Look at the latter part and tell us whether or not it doesn't have all the records of the corporation in effect, plant and equipment?

A. Of course, I couldn't tell if it had all the records; let me run through it.

Q. Does it have records other than accounts payable and receivable? [47]

A. Yes, it seems—two indices, as I have indicated, and after those, the general ledger in this binder.

Q. General ledger of what?

A. General ledger of the corporate items like—First National Bank of Kirkland control accounts, of accounts receivable, inventory, notes receivable, so called bolt account, which I think we then sold, real estate, auto camp, camp buildings, new buildings, new office, plant equipment, so forth.

Mr. Shefelman: I am going to ask the Clerk to mark this and put it in evidence, if I may.

The Court: Do you ever contemplate asking to withdraw it?

Mr. Shefelman: I certainly do.

The Court: If it is received—

(Testimony of F. M. Roberts.)

Mr. Shefelman: If the difficulties are great, I am going to withdraw it now, before I offer it.

The Court: It would seem, if you took a sample page of the different accounts and photostat them, and supplement it with the testimony of the witness, there would be no difficulty in understanding what was covered.

Mr. Shefelman: May I withdraw the offer of these, and ask leave of the Court to introduce photostat copies of some of these pages? Would you have any objection to that, Mr. Winter?

Mr. Winter: I would like to know what pages? They may not be representative.

Mr. Shefelman: You will have the privilege of photostating any other pages. [48]

Mr. Winter: The same thing is true of the other ledgers, covering the partnership and corporation.

Mr. Shefelman: I will withdraw my offer on the matter entirely. That is all.

Re-recross Examination

By Mr. Winter:

Q. Mr. Roberts, would you just state to the Court—maybe I had better have it marked—what book do you have before you, Mr. Roberts?

A. I was trying to see—the part which you have opened are certificates of annual or semiannual trial balances apparently monthly trial balances, in this part of the book. (Indicating)

Q. Covering what?

A. Covering the corporation.

(Testimony of F. M. Roberts.)

Q. Does it also cover the partnership?

A. I haven't found that out yet—I guess, trial balances from its inception through December 31st, 1932, of the corporation.

Q. And what, if any, of the partnership?

A. Those seem to be all of the trial balances; there is a page at the end and that is a profit and loss statement of the partnership for the last of 1933, for the last of 1934 and for the last of 1935. This, I might say, is a reserve binder, not a current binder.

Q. You say this is not a current binder?

A. I don't think there are any current things in it.

Q. What is this ledger? What do you call it, Mr. Roberts?

A. It is a reserve binder, by which I mean a book to which [49] pages were transferred after the accounts—after they were through with that.

Q. I will ask you to refer to the accounts. Apparently, there is an entry there as late as December—1929, Colby and Dickinson, Incorporated, account up there, account of James C. Carlson on the opposite page, was that closed out?

A. No, it seems to be——

Q. (Interrupting) A current account, isn't it?

A. No, this page is full, it has gone into the reserve binder and this was filled on August 31st, 1937. When they ceased to be current, when you don't have to use them any more in the current

(Testimony of F. M. Roberts.)

book, you put them away in the reserve binder. I presume this has the accounts of both in this reserve binder.

Q. On any accounts of the corporation which were taken over by the so-called partnership, they were carried on the partnership ledger in the same way——?

A. (Interrupting) You said “accounts which were taken over”, none were taken over.

Q. The operating accounts were taken over, were they not?

A. No, the corporation bought things from the same people, the partnership bought things from the same people the corporation bought from and sold lumber to the same people the corporation had sold to, but no accounts were taken over.

Q. None of those operating accounts——?

A. (Interrupting) Those are not accounts receivable or payable, they are general ledger accounts that you [50] refer to.

Q. They didn't take over any of the accounts receivable from their active purchasers?

A. No, no, they did business with the same people but they didn't take over the amounts that were owed to them.

Mr. Winter: I think that is all.

(Witness excused)

JAMES C. CARLSON,

called as a witness on behalf of the Plaintiff herein,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Shefelman:

Q. State your name, please?

A. James C. Carlson.

Q. You live at Bryn Mawr, Washington?

A. Yes.

Q. That is the little village just outside of
Seattle on the Renton road, where the mill is located,
is it not? A. Yes.

Q. You heard Mr. Roberts testify that there was
no written articles of partnership between you, is
that correct? A. Yes.

Q. When did you first become acquainted with
Mr. Roberts and how?

A. Oh, it was 'way back in about 1913, I had a
little mill, I got to know him in the Bank at Eaton-
ville, in the Ohop Valley. [51]

Q. And he bought the bank at Eatonville in
1913? A. Yes.

Q. Did you do business with him from that time
on?

A. Yes, banked at Eatonville, later on, got asso-
ciated with him.

Q. When did you actually go into business with
him in any way? A. In about 1922.

Q. That was where? A. At Duvall.

Q. And with which concern?

(Testimony of James C. Carlson.)

A. That was then known as the Getchell Lumber and Shingle Company.

Q. Were you a partner in the Bear Creek Timber Company? A. Yes.

Q. Did you have any written articles of partnership there? A. No.

Q. And what was the name of the Getchell Lumber and Shingle Company changed to?

A. Cottage Lake Lumber Company.

Q. What was your connection with this Mill?

A. I was the Manager.

Q. And officer of the Corporation?

A. Yes, when we changed into the Cottage Lake Lumber Company, I became president.

Q. And Mr. Roberts, Secretary and Treasurer of the Company? A. Yes.

Q. Then in 1929 you went with this mill?

A. Yes.

Q. Prior to the change to the partnership, June 30th, [52] 1933, had Mr. Roberts discussed it with you? A. Yes.

Q. And had he told you that the purpose was to decrease as much as possible the income——?

Mr. Winter: (Interrupting) I think the witness should testify.

Mr. Shefelman: I will withdraw the question.

Q. Why, had he told you, the change should be made? A. We could save some taxes.

Q. On June 30th, 1933, were you present at the meetings that he has talked about?

A. Yes.

(Testimony of James C. Carlson.)

Q. Did you, on that day, sign these instruments that have been put in evidence, deed, bill of sale?

A. Yes.

Q. What steps did you take to make known the change in name of the concern after June 30th, 1933?

A. We changed our sign on the mill, changed the signs on the truck and we got a stamp and changed our headings on our bills, letterheads.

Q. Did any customers ask you the reason for the change or what it was about?

A. Yes, practically all of our customers; we only have about a dozen customers, they know us well, our setup.

Q. And did you explain to them the change from a corporation to a partnership? A. Yes.

Q. You heard Mr. Roberts testify with reference to discounting your bills and paying cash, in effect, for all purchases, is that how you have been doing business? [53] A. Yes.

Mr. Shefelman: I understand Defendant's exhibit 1-A has been admitted in evidence?

The Clerk: Yes.

Q. Mr. Carlson, showing you Defendant's 1-A, which is a yellow lithographed printed check "Seattle Renton Mill Company" and down in one corner, in small type, underneath the line where the signature is to be made, appears the words "President" and "Treasurer". Will you tell the Court, if you please, how those checks were ordered and the

(Testimony of James C. Carlson.)

entire story in connection with the appearance of those words on the check?

A. Well, a salesman came in the Mill, wanted to sell us some checks.

Q. About when was it?

A. Well, that was, I can't remember exactly, shortly after we changed the corporation to the partnership.

Q. Who was that salesman?

A. I can't recall his name.

Q. He is present in the courtroom now?

A. Yes.

Q. Go ahead?

A. He showed us samples of the checks; I picked out this one; we had them ordered sent out, and when we got the checks we found this word "President", "Treasurer" printed on there and when the gentleman came out, I told him about it. He was very—he felt quite bad about it; he told me it was one of the first jobs that he had selling these checks; he said he was willing to take them back and have them reprinted, [54] if we insisted; I told him that wasn't necessary, since we ordered that many checks, about 10,000, Mr. Dougherty and I decided to scratch them out and take his checks and we kept them.

Q. When he showed you the samples and you ordered the checks, did you have "President" and "Treasurer" written on that? A. No.

Q. You say he came to you after the checks were delivered? A. Yes.

(Testimony of James C. Carlson.)

Q. What did you say—with reference to his offering to take them back?

A. Well, I felt sorry for him; I said “I will keep the checks.”

Q. How many did you get?

A. I believe it was 10,000.

Q. And are you still on that first 10,000?

A. Yes.

Q. You haven't quite used them up yet?

A. No.

Q. Now, Mr. Carlson, you were the President of the corporation, were you not?

A. Yes.

Q. And Mr. Roberts was Treasurer?

A. Yes.

Q. As a matter of fact, during the time that the corporation was doing business, did you have occasion to sign any substantial number of checks as President?

A. No, very little. I would say about a dozen.

Q. Since this partnership was organized in June, the 30th, [55] 1933, who has signed all the checks of the partnership?

A. Mr. Dougherty.

Q. He is not a partner, is he?

A. No.

Q. And have you and Mr. Roberts signed any substantial number of checks?

A. No.

Q. Out of 8,000 or 9,000 checks, you have used about how many, would you say, you have signed?

A. Very few, not over a dozen.

Q. At the time the Mill was transferred to the partnership, the testimony shows, I believe, that 215

(Testimony of James C. Carlson.)

shares of stock stood in your name and 5 in your wife's, 5 in your daughter's and 5, each of your two daughters, total 230, what happened to their interest when the mill was transferred to the partnership?

A. Well, they were my shares in the corporation and they were mine afterwards; I paid for them.

Q. And you considered them yours?

A. Yes.

Q. And you paid for them? A. Yes.

Q. On your income tax returns did you and your wife divide that stock between you, just as you did everything else? A. Yes.

Mr. Shefelman: That is all. [56]

Cross Examination

By Mr. Winter:

Q. Mr. Carlson, you said you could scratch out "President" and "Secretary" on the checks. Did you ever scratch it out?

A. Well, I think we did, when we started in using the checks.

Q. When did you start to use the checks?

A. Well, we started in just as soon as we got them, I can't recollect the date, shortly after.

Q. In November? A. Yes.

Q. Take a look at your checks for November 1933. I want you to show me one where you scratched them out?

A. (Indicating) That isn't my signature.

Q. How many checks did you say you have

(Testimony of James C. Carlson.)

issued in all the time you have been there, probably a dozen? A. Probably.

Q. You mean you would scratch it out and not Mr. Dougherty, is that what you mean by your statement?

A. I wouldn't swear I scratched out mine, either, all of them.

Q. As a matter of fact, you didn't scratch out any, any time, did you, Mr. Carlson?

A. It was our intention.

Q. Have you got one check you could show me you scratched out? A. I think I could.

Q. All right, let's find it.

Mr. Shefelman: If that is material, I [57] suggest the witness finish his testimony, then he can step down and look through the checks.

Q. Look through all the checks, Mr. Dougherty signed some 50 or 60 checks——?

Mr. Shefelman: (Interrupting) I agree none of those are scratched.

Mr. Winter: None of them?

Mr. Shefelman: Not all of them, but the ones you handed the witness don't show the words "President" and "Treasurer" scratched.

Mr. Winter: Would you agree here are some 50 or 60 checks?

Mr. Shefelman: More than that, there are over 100 here, 117. I will agree to that. I will agree, as far as I know, the words "President" and "Treasurer" were not normally scratched off the checks.

(Testimony of James C. Carlson.)

Q. Are you sure you scratched them off, Mr. Carlson, at any time?

A. I signed so few checks, I am sure I scratched out, when I first started, that is my recollection; probably if you find the checks at the first, you will find them scratched out.

Q. How many checks were signed—about a dozen? A. Couple dozen, at the most.

Q. In a period of approximately 10 years?

A. Yes.

Q. There were, normally, issued some 150 checks, would you say, a month, from that Company and from the partnership?

A. Oh, not quite that many, I don't think—possibly.

Mr. Winter: I think that is all. [58]

Redirect Examination

By Mr. Shefelman:

Q. Mr. Carlson, Mr. Dougherty went to work for you when?

A. I think it was about five years ago.

Q. It was about 1932? A. Yes.

Q. Of course, he didn't sign any checks before that time? A. Yes.

Q. And you did sign checks up until the time he came there?

A. Yes, I signed most of the checks.

Q. This same batch of checks shown you by Mr. Winter, all of those are signed by Mr. Dougherty, are they not? A. Yes.

(Testimony of James C. Carlson.)

Q. And he was at no time, President or Treasurer of the corporation while it was in existence?

A. No.

Mr. Shefelman: That is all.

Recross Examination

By Mr. Winter:

Q. I want the witness to find one check where he crossed it out?

Mr. Shefelman: I can't see the particular materiality. I am willing to agree, in general, the words weren't scratched, whether there are one or two out of 9,000 with the words scratched out, I can't make a statement with reference to that. We will try to look through the checks while the other witnesses are testifying; if we can find any, we will tell you. [59]

That is all, Mr. Carlson.

(Witness Excused)

CECIL F. NEIDEFFER,

called as a witness on behalf of the plaintiff herein,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Shefelman:

Q. What is your full name?

A. Cecil F. Neideffer.

Q. Where do you live, Mr. Neideffer?

(Testimony of Cecil F. Neideffer.)

A. I live in Seattle at the present time.

Q. What is your street address?

A. 617 West Mercer Place.

Q. What is your business?

A. Salesman for the Todd Sales Company, we sell lithographing, such as checks, bank supplies.

Q. And in the fall of 1933, whom were you employed by? A. The Todd Sales Company.

Q. When did you first go to work for them?

A. I first went to work for them in about 1932.

Q. I will show you the Defendant's exhibit No. 1-A, and ask you whether you recognize that?

A. I do .

Q. What is that?

A. That is a check that my Company made and—you understand when I first went to work for the Company, they only allowed me to sell certain products; they just recently released me to sell lithographing and checks. [60]

Q. You said just recently?

A. About the time this order was taken, just before that, I had been given the samples and was turned loose to sell checks, so to speak.

Q. Was that one of the first check orders you ever got?

A. That is right, there is a good deal of detail that has to be compiled in making up a check order.

Q. That has in one corner "Patented Todd, Rochester, N. Y." That is your Company?

(Testimony of Cecil F. Neideffer.)

A. That is right.

Q. Did you, personally, take the order for these checks from Mr. Carlson and Mr. Dougherty?

A. Yes.

Q. You remember about when that was?

A. It was about August or September.

Q. 1933? A. 1933.

Q. Did you show Mr. Carlson and Mr. Dougherty, in general, the layout for the form of the check?

A. Yes, I sketched it up.

Q. Did you also show them your stock in which the check was printed? A. Yes.

Q. Was this the stock you showed them? (Indicating)

A. Yes, they looked at other checks borders, whatnot, to select what they wanted.

Q. Did they select this stock? (Indicating)

A. Yes.

Q. And generally, approve the layout you made?

Mr. Winter: Was that a written order for the [61] checks? A. Yes.

Mr. Winter: The order is the best evidence.

Mr. Shefelman: I haven't asked him what was in the order, I asked whether he personally took the order for the checks, and his answer was yes.

Mr. Winter: That is all right, then.

Q. Did you draw a penciled sketch of the layout of the check? A. Yes.

Q. Do you still have that penciled sketch?

(Testimony of Cecil F. Neideffer.)

A. No.

Q. On that penciled sketch, did the words "President" and "Treasurer" appear or either of those words?

Mr. Winter: I object to that as leading. He can ask what appeared on that sketch.

The Court: Overruled.

Q. On the sketch which you drew at that time and showed them, when you took the order, did you have the words "President" and "Treasurer" on them?

A. I don't remember them being on there, that is quite a long time ago.

Q. Now, how many checks were in that order?

A. 10,000.

Q. Have you renewed that order since?

A. No.

Q. They are still working on the same checks?

A. Yes.

Q. Did you see Mr. Carlson soon after the checks were delivered to him? [62]

A. Yes, I did.

Q. And was anything said by him at that time?

A. Yes.

Q. With reference to the words "President" and "Treasurer"? A. Yes.

Q. What did he say?

A. He brought it to my attention and I said "Well, I was sorry that this was put on, "President" and "Treasurer" was put on the checks,

(Testimony of Cecil F. Neideffer.)

“and explained to him that we would take the checks back and have them made over and he, of course, felt that since just the names “President” and “Treasurer” were on there, and I had showed him other checks, where authorized signatures were put on the signature lines, and made no difference, he says “I don’t see it is necessary, just for a few words like that, to make them over”, so he was kind enough to keep the checks.

Mr. Shefelman: That is all.

Cross Examination

By Mr. Winter:

Q. Did you know the Seattle Renton Lumber Company was a corporation or not? A. No.

Q. Did you know whether the Seattle Mill Company was a corporation or not? A. No.

Q. Did you have a written order for the purchase of these checks?

A. No—my Company always requests orders signed when we [63] accept the orders for checks.

Q. Have you got the written order?

A. No.

Q. Do you know where it is?

A. Probably in my company’s files some place.

Q. Where is your company’s offices?

A. Rochester, New York.

Q. You were working for——?

A. (Interrupting) This is a branch office in Seattle.

(Testimony of Cecil F. Neideffer.)

Q. Where is the branch office in Seattle, where in Seattle? A. Terminal Sales Building.

Q. What is the name of the Company?

A. Todd Sales Company.

Q. Is the order, written order, Todd Sales Company order, back in New York?

A. We may have a copy of the work sheet in our office.

Q. You didn't bring that with you?

A. No.

Q. You don't remember what was on that sketch, do you?

A. I remember—sketch outlay you mean?

Q. Do you remember what was on the order?

A. I don't get your question.

Q. Do you remember what the order consisted of, outside of the general amount of the number of checks?

A. Just the amount and price and when to be shipped.

Q. That is all you remember about the order?

A. That is right.

Mr. Winter: I think that is all.

(Witness Excused) [64]

VINCENT DOUGHERTY,

called as a witness on behalf of the Plaintiff herein,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Shefelman:

Q. Your full name is what?

A. Vincent Dougherty.

Q. Where do you live? A. In Renton.

Q. Are you now employed by the Seattle Renton Mill Company? A. Yes.

Q. How long have you been?

A. Since February 15th, 1932.

Q. At that time employed by the corporation?

A. Yes.

Q. Did you remain after they transferred the property to the partnership? A. Yes.

Q. Ever since? A. Yes.

Q. In what capacity? A. Bookkeeper.

Q. Have you held any office in the corporation at any time? A. (No reply.)

Q. Are you a member of the partnership?

A. No.

Q. An employe of the partnership?

A. Yes.

Q. And were of the corporation?

A. Yes. [65]

Q. Were you present at the time Mr. Carlson ordered these checks from Mr. Neideffer?

A. Yes.

Q. And did you see the sketch prepared by Mr. Neideffer at that time showing the layout?

(Testimony of Vincent Dougherty.)

A. Yes.

Q. Were the words "President" and "Treasurer" on that sketch?

A. Not that I know of.

Q. Were you there when he called to see Mr. Carlson after the delivery of the checks?

A. Yes.

Q. What conversation took place between Mr. Carlson and Mr. Neideffer with reference to the words "President" and "Treasurer"?

A. We asked why he put that on the checks and he said "Well—" he thought we wanted it on there, said that if we didn't want the checks written that way, he would take them back and have them made over, and we didn't want to cause him a lot of inconvenience, so we decided to keep the checks, we didn't figure it made any difference.

Q. Since you have been bookkeeper who has signed practically all the checks of the Company?

A. I have.

Q. During the period when the corporation was operating the business, did the President and Treasurer sign any substantial number of checks?

A. Very few.

Q. When did you obtain this printed form of check? [66]

A. It was sometime late in 1933.

Q. When?

A. The new printed checks?

Q. Yes.

(Testimony of Vincent Dougherty.)

A. Sometime late in 1933, about October or November, somewhere around there.

Q. I show you what is marked for identification Plaintiff's exhibit No. 11, and ask you what that is?

A. That is a check written from the Seattle Renton Mill Company by myself.

Q. That is dated July 3d, 1933? A. Yes.

Mr. Shefelman: I will offer that in evidence, Mr. Winter.

Mr. Winter: No objection.

The Court: Admitted.

Plaintiff's Exhibit No. 11, the check last above referred to, admitted in evidence.

Ref # 1222 and full

NB
KIRKLAND

51

Plaintiff's Exhibit No. 11
Jan 11/23/39

No. 1

10 33

KIRKLAND, WASHINGTON

B. F. Laggan

PAY TO THE
ORDER OF

\$ 1399.61

THIRTEEN HUNDRED NINETY NINE DOLLARS SIXTY ONE CENT & ONLY ~~1399~~ DOLLARS

TO FIRST NATIONAL BANK,
KIRKLAND, WASHINGTON.

98-440

Seattle Benton Mill Co.
By: J. Dougherty

By First National
Bank of Richmond
312 Laggan &
2023.

No. 1027
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
OCT 11 1942

PAUL P. O'BRIEN,
CLERK

10 33

(Testimony of Vincent Dougherty.)

Q. That is check No. 1 on the Seattle Renton Mill Company account, is it not? A. Yes.

Q. Signed by "V. Dougherty", no designation, President or Treasurer? A. No, sir.

Mr. Shefelman: And I will also offer in evidence Plaintiff's exhibit No. 12, which is a Seattle Renton Mill Company check, dated July 1st, 1933.

Mr. Winter: No objection. [67]

NO 98
KIRKLAND

July 24, 1939

Plumber's Exhibit No. #12
Claw 1/23/39

Otto Newdickson

PAY TO THE
ORDER OF

SEVENTY FIVE DOLLARS ONLY

DOLLARS

TO FIRST NATIONAL BANK,
KIRKLAND, WASHINGTON.
98-110

SEATTLE PENTON MILL CO.

BY

P. D. Daugherty

\$75.00

7/21 10 33

No. 38

Pay to the order of any Bank or Banker of
through the Seattle Clearing House or Trust Co.
ALL PRICES ENDORSED BY THE BANK OF AMERICA
JUL 25 1939 4 1933
1931 SEATTLE NATIONAL BANK
FEDERAL RESERVE BANK OF SEATTLE, WASH.
98-110

No. 10774
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT. 6 - 1942

PAUL P. O'BRIEN.
CLERK

Otto Newdickson

11 em

(Testimony of Vincent Dougherty.)

Q. That is a check marked July 21st, 1933, (indicating) on the check, showing "Seattle Renton Mill Company" was written in. I notice here, it appears stamped in. Did you in the meantime obtain a regular stamp for your checks?

A. Yes.

Q. That is signed by yourself "V. Dougherty" with no designation of any office?

A. That is right.

Q. Immediately after June 30th, 1933, when the transfer was made, do you recall whether the name "Seattle Renton Lumber Company" was changed to "Mill Company" on the building, trucks and so forth?

A. On the water tank, in front of the mill, we had the painters come.

Q. Was any change made on the invoices and the rest of your stationery?

A. Yes, written in with a pencil, mostly, it was easier to write with a pencil.

Mr. Winter: The records are the best evidence of what change was made on them.

Q. Did any customers, who bought lumber of you, ask you personally about the change, immediately after it was made, June 30th, 1933?

A. Practically all of them at different times, over the 'phone wanted to know what the idea was, to have "Lumber Company" crossed out on the invoice and "Mill Company" written in.

(Testimony of Vincent Dougherty.)

Q. Did you explain it to them?

A. Oh, yes. [68]

Q. Did you tell them what had happened with reference to the transfer of the property?

A. Yes.

Q. You have heard the testimony with reference to the Mill Company and Lumber Company during its operation taking its cash discount within a 10-day period, is that correct? A. Yes.

Q. You keep the books of the partnership?

A. Yes.

Q. You kept the books of the corporation?

A. Yes.

Q. And aside from putting the sheets in the same loose leaf binder, have you kept a separate record for the partnership? A. Yes.

Q. And for the corporation? A. Yes.

Mr. Shefelman: That is all.

Cross-Examination

By Mr. Winter:

Q. You were auditor for the corporation before June 1933, is that right? A. Yes.

Q. Bookkeeper? A. Yes.

Q. You have been keeping the books since?

A. Yes.

Q. Receiving the same salary from the partnership you [69] received from the corporation?

A. Practically the same, maybe improved a little since.

(Testimony of Vincent Dougherty.)

Q. Were you paid any salary by the corporation after June 30th, 1933? A. No.

Q. You have been keeping their books on all accounts receivable, collecting, is that right?

A. Yes.

Q. Paid by the Mill Company? A. Yes.

Q. Did you tell any customers, when they talked to you, asked if any change in the organization, there was no change except in name—what did you tell them?

A. What is the question?

Q. What did you tell the customers when they called you up?

A. I told them we had changed from a corporation to a partnership.

Q. Did you tell them there was any change in the business of any kind?

A. It wouldn't be any of their business, the rest of it.

Q. Did you tell them it was none of their business?

A. No, you couldn't very well do that, with customers.

Q. Did you ever cross out the words "President"—"Vice President" or "President" and "Treasurer" on the checks that you wrote?

A. Lots of them, I don't know just when I started in, though.

Q. Lots of them?

A. Yes, lots of them. [70]

(Testimony of Vincent Dougherty.)

Q. On the new check? A. Yes.

Q. Did you in 1933, in November?

A. I don't remember that.

Q. Will you look at the November checks and see——?

A. (Interrupting) No, I don't think there was any, we have gone through them.

Q. Was it after this, when Mr. Estes, the Revenue Agent, was out at your Company, you started doing that?

A. I would have to check the checks to see.

Q. What is your best recollection, before or after he was out there, that you did?

A. I don't know.

Q. Would you say it was before or would you say after?

A. I know that I have crossed out some after.

Q. Can you tell us of any check you crossed out before then, the date of it? A. No, I did not.

Q. As a matter of fact, you didn't cross any out until that question came up?

A. No, I didn't see any reason to cross it out.

Q. It was after the Revenue Agent was out there?

A. I don't know that, I would have to check the checks to find out.

Q. You wouldn't say you did sign any before?

A. Cross out, you mean?

Q. Yes, before the Revenue Agent was out there?

(Testimony of Vincent Dougherty.)

A. No, I couldn't say that now.

Q. Will you look and see if you can find any?

A. I couldn't say they are here. (Indicating)

[71]

Q. Did you cross them out before 1935?

A. I don't know.

Q. What is your best recollection?

A. I don't know that either, I couldn't tell you that, when I started.

Q. Did you cross any out prior to May 1st, 1935? A. I don't know.

Q. You have been the Auditor of the Company. You have all the checks here?

A. No, I haven't not one quarter of them, not a tenth of them.

Q. I mean during the period of June 30th to May 1st, 1935, do you have all those checks here?

A. From when?

Q. June 30th, 1933, to May 1st, 1935?

A. No, I don't think so, no we haven't, maybe, too, I would have the checks.

Q. Can you produce in Court any check where you have crossed out—they are in your custody, aren't they, as bookkeeper or Auditor of the Company?

A. Yes—no occasion to cross it out, not necessary.

Q. Then you did not?

(Testimony of Vincent Dougherty.)

A. I did not make any particular effort to cross them out.

Mr. Winter: That is all.

Mr. Shefelman: I will offer in evidence, before you leave the stand, the batch of 117, I take it, less 2 checks put in evidence already, representing the checks drawn on the account of the Seattle Renton Mill Company during the month of July 1933.

Mr. Winter: No objection, Your Honor. [72]

The Court: Admitted, No. 13.

Plaintiff's exhibit No. 13, the checks just referred to, 117 checks, admitted in evidence, less 2 checks already admitted in evidence.

KIRKLAND

8 lbs @ 32 1/2 - 260
Dipta - 7/3

No. 21

1933

7/3

KIRKLAND WASHINGTON

Frank M. Leonard

PAY TO THE ORDER OF

TWO HUNDRED AND SEVENTY SEVEN CENTS ONLY

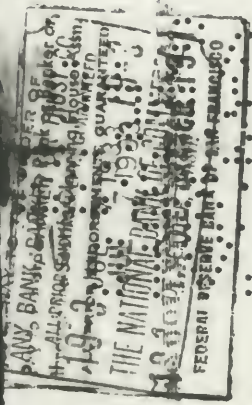
DOLLARS

TO FIRST NATIONAL BANK SEATTLE - BENTON LUMBER CO.

08-410

KIRKLAND

Property



James W. Stevens
9714-604 So.
Kirkland
1500
Aristocrat
Kirkland

July advance

30

333 1/2

Nonlinear Analysis

R. F. Combs

PLAY TO THE ORDER OF

FOUR DOZ. 45 C. DOLL.

DOLLARS

TO FIRST NATIONAL BANK, Seattle Renton Mills Co

(D) 1.1 - 33(3)

KIRKLAND, WASHINGTON.

Seale, Kenton Mills Co
By J. Dougherty.

P. 7 Bonds.
M. W. J. K. 1866.

1402 Pay to the order of

1402

五、

३८३

PAY TO THE ORDER OF
THE BANK OF AMERICA TRUST CO.
ALL OTHER MEMBERS GUARANTEED

10-17-1918 JUL 18 1918

FEDERAL RESERVE BANK OF WASHINGTON

0
10
20

NO
KIRKLAND

Only address

No. 4

7/8

10 33

KIRKLAND, WASHINGTON

PAY TO THE
ORDER OF J. C. Carlson

\$200.00

TWO HUNDRED AND ONLY DOLLARS

TO FIRST NATIONAL BANK,
KIRKLAND, WASHINGTON.
08-440

Seattle Renton Mill Co
By J. D. Laughlin

J. C. Carlson

PAID
\$200.00

KIRKLAND
No. 1

Is a part of the payment of 1898 to payee

000000

No. 35

1933

7/20

KIRKLAND, WASHINGTON

Seattle Renton Lbr. Co.

PAY TO THE
ORDER OF

FIVE HUNDRED DOLLARS

DOLLARS

TO FIRST NATIONAL BANK,

SEATTLE RENTON MILL CO.

KIRKLAND, WASHINGTON.

BY *W. Dougherty*

Pay to the order of
FIRST NATIONAL BANK OF KIRKLAND
SEATTLE RENTON LUMBER CO.
J.D.

PAID
7/20/33
\$500.00

NEB
KIRKLAND

Ref # 110191 in full - Helen Rindley

0000000000

PAY TO THE ORDER OF
E. H. Jackson
KIRKLAND, WASHINGTON

7/26 1933

No. 69

\$298.95

1000000000 TWO HUNDRED NINETEEN DOLLARS NINETY FIVE CENTS ONLY DOLLARS

TO FIRST NATIONAL BANK,
KIRKLAND, WASHINGTON.

SEATTLE RENTON MILL CO.
BY *D. Daugherty*

E. H. Jackson

PAY TO THE ORDER OF
ANY BANK OR BANKER OR THROUGH
CLEARING HOUSE ASSOCIATION OF SEATTLE
ALL PRIOR ENDORSEMENTS GUARANTEED
JUL 26 1933
19-2 FIRST NATIONAL BANK 19-2
SEATTLE WASH.
FIRST SEATTLE OFFICE

00

0000000000

(Testimony of Vincent Dougherty.)

PLAINTIFF'S EXHIBIT No. 13

Deposited for credit of Seattle Renton Mill Co.
with First National Bank of Kirkland, Wash.
Member Federal Reserve Bank.

7/3/33

In making this deposit the depositor hereby as-
sents to the conditions stated on the reverse side of
this form.

Specify Banks Upon Which Checks Are Drawn

Dollars Cents

Gold

Silver

Currency

Checks

J. W. Neilson..... 5,000 00

Total

(Testimony of Vincent Dougherty.)

Deposited for credit of Seattle Renton Mill Co.
with First National Bank of Kirkland, Wash.
Member Federal Reserve Bank.

7/7/33

In making this deposit the depositor hereby as-
sents to the conditions stated on the reverse side of
this form.

Specify Banks Upon Which Checks Are Drawn

Dollars Cents

Gold

Silver

Currency

Checks

Mrs. Henry L. Grey.... 8 50

Paul Newell 23 35

Total..... 31 85

(Testimony of Vincent Dougherty.)

Deposited for credit of Seattle Renton Mill Co.
with First National Bank of Kirkland, Wash.
Member Federal Reserve Bank.

Jul. 8, 1933

In making this deposit the depositor hereby as-
sents to the conditions stated on the reverse side of
this form.

Specify Banks Upon Which Checks Are Drawn

Dollars Cents

Gold

Silver

Currency

Checks

31 85

Total..... 31 85

(Stamped): Duplicate. (Illegible initial.)

[Endorsed]: Admitted Jan. 23, 1939.

Mr. Shefelman: That is all.

(Witness Excused.)

JAMES P. WETER,

called as a witness on behalf of the Plaintiff herein,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Shefelman:

Q. State your name, please.

A. James P. Weter.

Q. You are a member of our firm, Weter, Roberts and Shefelman? A. Yes.

Q. You and Mr. Roberts have been associated together in the practice of law, partners, since when?

A. I think the first of January 1904.

Q. From that date to this, have you and Mr. Roberts been associated as partners in various enterprises? A. In a great many.

Q. During the last ten or fifteen years, there have been joint with you in some of these enterprises, some of the other persons, partners, in this transaction, such as Mr. Shinstrom and Mr. Swan?

A. Yes. [73]

Q. And have you ever had any written articles of partnership between you on any of your partnership ventures? A. We never have.

Q. Did you discuss with Mr. Roberts, prior to June 30th, 1933, the advisability of transferring the mill to a partnership? A. I did.

Q. And did you, as a stockholder, agree to it?

A. I did.

(Testimony of James P. Weter.)

Q. Did you discuss it with your wife?

A. No.

Q. What was your expressed purpose in making the transfer?

A. To avoid corporation income taxes.

Mr. Shefelman: That is all.

Mr. Winter: That is all.

(Witness Excused)

Mr. Shefelman: That is the plaintiff's and petitioner's case, if the Court please.

Mr. Winter: If the Court please, if Counsel has no objection to it being a photostat copy, I would like to offer in evidence the assessment letter, which shows the basis of the assessment against the plaintiff in this case. I think it will be helpful to the Court in showing the basis upon which the assessment—it shows the amount—this is the amount—net income report of the partnership return, I am not sure that is shown in there, and some adjustments made not here in issue— [74]

Mr. Shefelman (Interrupting): Everything with reference to these matters as pleaded in our petition, is admitted by the defendant and I have tried to make my record just as short as possible. The only purpose I can see in that is to perhaps acquaint the Court with some of the persuasive reasons of the Department for making the assessment.

Mr. Winter: So as to show the basis on which

the assessment is made; you have the original assessment letter?

Mr. Shefelman: Yes.

Mr. Winter: I offer it in evidence. You make no objection to the photostat copy.

Mr. Shefelman: There will be no objection to that but I don't see its materiality to the case.

Mr. Winter: The basis on which the assessment was rendered.

The Court: Admitted.

Defendant's Exhibit A-2, the letter just referred to, admitted in evidence.

DEFENDANT'S EXHIBIT No. 2-A

SN-AE

Registered Jan 10 1936

IT:AR:E-3

VDS-90D

Seattle Renton Lumber Co.,

Bryn Mawr, Washington.

Sirs:

You are advised that the determination of your income tax liability for the taxable year(s) 1933 discloses a deficiency of \$2772.90 and that the determination of your excess profits tax liability for the year(s) mentioned discloses a deficiency of \$874.39 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiencies mentioned. Within ninety days (not

Defendant's Exhibit No. 2-A—(Continued)
counting Sunday or a legal holiday in the District
of Columbia as the nineteenth day) from the date
of the mailing of this letter, you may file a petition
with the United States Board of Tax Appeals for
a redetermination of the deficiencies above stated.

Should you not desire to file a petition, you are
requested to execute the enclosed form and for-
ward it to the Commissioner of Internal Revenue,
Washington, D. C., for the attention of IT:C:P-7.
The signing and filing of this form will expedite
the closing of your return(s) by permitting an early
assessment of the deficiencies, and will prevent the
accumulation of interest, since the interest period
terminates thirty days after filing the form, or on
the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By

(Signed)

W. T. SHERWOOD

Acting Deputy Commissioner

Enclosures:

Statement

Form 870

VBS/CSH-3

Defendant's Exhibit No. 2-A—(Continued)
STATEMENT

IT:AR:E-3

VBS-90D

In re: Seattle Renton Lumber Co.,
Bryn Mawr, Washington.

Tax Liability for Taxable Year 1933

	Tax Liability	Tax Assessed	Deficiency
Income tax	\$3,263.93	\$491.03	\$2,772.90
Excess-profits tax	874.39	None	874.39

Careful consideration has been accorded your protest dated June 13, 1935 in connection with findings of the examining officer, and the information submitted at a conference held in the office of the internal revenue agent in charge.

The records of this office indicate that no reply has been received to letter dated October 26, 1935, advising you of the approval of the report submitted by the internal revenue agent in charge at Seattle, Washington, a copy of which was transmitted to you.

Computation of Net Income

Net income reported on return.....		\$3,571.15
Add:		
(a) Excessive depreciation for period		
January 1, 1935 to June 30,		
1933	\$ 279.86	
(b) Unreported income for last		
6 months of that year.....	19,754.55	
(c) Life insurance premiums.....	508.79	20,543.20
Total		<u>\$24,114.35</u>

Defendant's Exhibit No. 2-A—(Continued)

Less:

(d) Taxes understated January 1, 1933 to June 30, 1933.....\$	326.65	
(e) Capital stock tax.....	50.00	376.65
		<hr/>
Corrected net income.....		\$23,737.70

Explanation of Items

(a) Depreciation as shown in Exhibit A enclosed is believed to be a reasonable allowance for exhaustion, wear and tear of your depreciable assets for the period January 1, 1933 to June 30, 1933 and depreciation claimed in excess of that amount, accordingly, has been disallowed.

(b) This office holds that there was no partnership formed as at July 1, 1933 for the following reasons:

(1) There was no written partnership agreement as to control and management by the individual partners or as to how earnings should be distributed.

(2) The majority of the so called partners were inactive and it appears that none of the stockholders had ever formally agreed to the transfer of the assets of the corporation to the so called partnership.

(3) It would appear to be possible that the alleged partnership was formed even without the knowledge of some of the stockholders of the corporation.

(4) The continued existence of the corporation would indicate that the so-called partnership is in

Defendant's Exhibit No. 2-A—(Continued)
name only and the business is actually conducted as a corporation.

The entire net income for the year, accordingly, has been included in the corporation's net income. The unreported income for the last six months of the year was computed as shown below:

Net income reported on partnership return by Seattle Renton Mill Co.....		\$19,050.62
Add:		
(1) Excessive depreciation claimed (See Exhibit B Enclosed).....	\$275.79	
(2) Taxes overstated	428.14	703.93
	<hr/>	<hr/>
Net income for period July 1, 1933 to December 31, 1933.....		\$19,754.55

Taxes disallowed covering the last one-half of 1932 real and personal property taxes were accrued prior to July 1, 1933, and, therefore, were not a proper deduction for a period subsequent to July 1, 1933.

(c) Life insurance premiums paid on the life of an officer of the corporation have been disallowed as deductions in accordance with article 283 of Regulation 77 since the corporation is the beneficiary of the policy.

(d) The excess amount of taxes accrued over taxes paid has been allowed as a deduction since your books and accounts are kept on the accrual basis.

Defendant's Exhibit No. 2-A—(Continued)

Accrued real and personal property taxes.....	\$757.37
Taxes deducted	430.72
<hr/>	
Additional deduction	\$326.65

(e) Capital stock tax is an allowable deduction in accordance with section 23(c) of the Revenue Act of 1932.

Computation of Tax

Net income	\$23,737.70
Income tax at 13¾%.....	\$3,263.93
Tax originally assessed #4 400021.....	491.03
<hr/>	
Deficiency in income tax.....	\$2,772.90
Net income	\$23,737.70

Less:

12½% of declared value of capital stock, \$50,000.00	6,250.00
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Balance subject to excess-profits tax.....	\$17,487.70
Excess-profits tax at 5%.....	\$ 874.39
Previously assessed	None

Deficiency in excess-profits tax.....	\$ 874.39
---------------------------------------	-----------

In case you agree to the entire amounts of the deficiencies, please fill in the amounts of \$2,772.90 and \$874.39 on the enclosed form 870 (Waiver of Restrictions) and forward it, properly executed, to the Commissioner of Internal Revenue, Washington, D. C. However, if you do not acquiesce in all of the adjustments making up the deficiencies indicated, but would like to stop the accumulation of interest on that part of the deficiencies resulting

Defendant's Exhibit No. 2-A—(Continued)

from adjustments to which you agree, please fill out the form 870 inserting therein the amounts you desire to have assessed at once. In the event that you agree to only a part of the deficiencies indicated, the execution of the form for the agreed portion of the deficiencies will not deprive you of your right to petition the United States Board of Tax Appeals for a redetermination of the tax liability for the year or years to which it relates.

Defendant's Exhibit No. 2-A (Continued)

IT-AR.E-3
VBS-90D
Seattle Renton Lumber Company

EXHIBIT A
DEPRECIATION SCHEDULE

Description	Acquired	Corrected Balance Close of Year	Additions	Reserve December 1, 1932	Rate of Cost or Estimated Life From Dec. 31, 1932	Unrecovered Balance Dec. 31, 1932	Depreciation 6 Months to June 30, 1933	Amended Reserve June 30, 1933
Plant and Equipment.....	1929		\$101,392.46)	\$13,342.65	5% on cost	\$88,049.81)		
	Jan. 3, 1933	\$101,763.64	1/3 371.18)		5% on cost)	\$2,544.09	\$15,886.74
Maek Truck	1930	5,500.00	5,500.00	1,833.33	5 Years	3,666.67	366.67	2,200.00
Second Hand Truck.....	Sept. 1, 1932	345.00	345.00	38.33	2 3/4 Years	306.67	55.76	94.09
Ford Coupe	1931	669.00	669.00	248.37	3 Years	420.63	70.10	318.47
Boat	1929	1,773.12	1,773.12	457.79	12 Years	1,315.33	54.80	512.59
Office Equipment	1929	580.48	580.48	57.45	5% on cost	523.03	14.51	71.96
				\$15,977.92			\$3,105.93	\$19,083.85

DEPRECIATION SUMMARY

Depreciation claimed	\$3,385.79
Depreciation allowed	3,105.93
Depreciation decreased	\$ 279.86

VBS/CSH-3

A (Continued)

CHEDULE

Reserve June 30, 1933	Estimated Life From June 30, 1933	Unrecovered Cost at June 30, 1933	6 Months Amended Depreciation 1933	Amended Reserve Dec. 31, 1933
886.74	5% on cost	\$85,876.90	\$2,544.09	\$18,430.83
200.00	4½ Years	3,300.00	366.67	2,566.67
94.09	2¼ Years	250.91	55.75	149.84
318.47	2½ Years	350.53	70.10	388.57
512.59	11½ Years	1,260.53	54.80	567.39
71.96	5% on cost	508.52	14.51	86.47
	5% on cost		4.08	4.08
083.85		\$91,547.39	\$3,110.00	\$22,193.85

-----\$3,385.79
----- 3,110.00

-----\$ 275.79

Mr. Winter: The defendant rests, Your Honor.

Your Honor, this case has to be briefed. Mr. Shefelman, you filed a brief?

Mr. Shefelman: That was only a trial brief, was no attempt to brief our case at all.

The Court: Neither side will be deprived of the opportunity to brief the case.

(Argument.)

(Adjournment.)

[Endorsed]: Filed Sep. 8, 1942. [75]

[Endorsed]: No. 10274. United States Circuit Court of Appeals for the Ninth Circuit. Seattle Renton Lumber Company, a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed October 5, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
Ninth Circuit

No. 10274

SEATTLE RENTON LUMBER CO., a
corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS

To the Honorable Judges of the United States Circuit Court of Appeals—Ninth Circuit and to the United States of America, Appellee herein:

The Seattle Renton Lumber Co., a corporation, Appellant herein, on its appeal to the United States Circuit Court of Appeals—Ninth Circuit, will rely on the following points:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in making the findings contained in Paragraphs VI, VII, VIII, IX and X of that Court's Findings of Fact (Pages 32 to 35 of District Court's Transcript of Record), wherein the Court found that there was no partnership formed by the stockholders of the Appellant taxpayer prior to, or on June 30, 1933, or at any time before January 1, 1934; that the Appellant operated its busi-

ness on the same basis after June 30, 1933 as it did prior thereto; that income arising out of the operation of the business subsequent to June 30, 1933, was income of the Appellant; that Appellant failed to satisfy the requirements of the burden of proof, and that the record showed no overpayment of tax. The said findings were erroneous in that there was insufficiency of the evidence to justify such findings since no evidence was adduced that the Appellant engaged in business or received income so as to subject it to a tax after June 30, 1933, but to the contrary, all of the evidence introduced clearly established that a partnership was formed prior to or on June 30, 1933, which thereafter owned and operated the business, and that Appellant did not engage in any business nor receive any income so as to subject it to a tax after June 30, 1933, and the Court should have made findings of fact to the effect that such a partnership was formed on or before June 30, 1933, and that Appellant did not engage in any business nor receive any income so as to subject it to a tax after June 30, 1933.

2. The said District Court further erred in making its Conclusions of Law (Page 35 of the District Court's Transcript of the Record) and Judgment (Page 36 of the District Court's Transcript of the Record) because of the insufficiency of the evidence as hereinbefore stated to justify the findings of the said court, and the court should have made its Findings of Fact, Conclusions of Law and Judgment to the effect that a partnership was formed prior to

or on June 30, 1933, which thereafter owned and operated the business; that Appellant did not engage in any business nor receive any income so as to subject it to tax after June 30, 1933; and that Appellant should recover judgment against the Appellee for the sum of the taxes paid herein by Appellant pursuant to the notice of deficiency given by the Collector of Internal Revenue.

SEATTLE RENTON LUMBER
CO., a corporation,
Appellant.

By WETER, ROBERTS &
SHEFELMAN
Its Attorneys

Copy received this 7th day of October, 1942.

J. CHARLES DENNIS
THOMAS R. WINTER

[Endorsed]: Filed Oct. 12, 1942.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION OF MATTER TO BE
INCLUDED IN PRINTED RECORD

To the Honorable Clerk of the Above Entitled
Court:

The Seattle Renton Lumber Co., a corporation, appellant, and the United States of America, appellee, by their respective attorneys, Weter, Roberts & Shefelman, and J. Charles Dennis and Thomas

R. Winter, stipulate and designate that the following portions of the proceedings and evidence certified to this court by the Clerk of the United States District Court for the Western District of Washington, Northern Division, be included in the printed record herein:

I.

All of the Transcript of the Record certified to this court by Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, Northern Division, by his Chief Deputy, Truman Egger, which Transcript includes the following:

Page of Transcript	Item
1	Names and addresses of counsel
2 to 7 (inc.)	Plaintiff's Petition
8 to 10 (inc.)	Defendant's Answer
11 to 12 (inc.)	Plaintiff's Reply
13	Stipulation submitting case to Honorable Judge Lloyd L. Black
14 to 29 (inc.)	Oral Decision of the Honorable Judge Lloyd L. Black
30	Motion for New Trial
31	Order Denying Motion for New Trial
32 to 35 (inc.)	Findings of Fact and Conclusions of Law
36	Judgment
37	Notice of Appeal

Page of Transcript	Item
38	Order Transmitting Exhibits
39	Stipulation of Record on Appeal
41 to 42 (inc.)	Certificate of Clerk of District Court of record on appeal

All of the Reporter's Transcript of the evidence, which is entitled "Statement of Facts", which transcript is certified to by the Clerk of the District Court in the certificate found on pages 41 and 42 of the Transcript of the Record.

II.

The following exhibits or parts thereof, the originals of which have been filed in this court and have been duly certified to by the Clerk of the District Court for the Western District of Washington, Northern Division:

Plaintiff's Exhibits:

Number of Exhibit	Portion thereof to be included
1	All
2	All
3	All
4	All
5	All
6	All
7	All
8	All
9	All
10	All

The following invoices only in this Exhibit should be included:

Number of Invoice	Date thereof
07013	June 30, 1933
07016	June 30, 1933
07017	July 1, 1933
07018	July 1, 1933
07174	July 17, 1933
07175	July 17, 1933
07304	July 31, 1933

Number of Exhibit	Portion thereof to be included
11	All
12	All
13	

The following checks and deposit slips only in this exhibit should be included:

Deposit Slips issued by First National Bank of
Kirkland, dated:
July 3, 1933
July 7, 1933
July 8, 1933

Checks:

Number	Date
2	July 3, 1933
3	July 5, 1933
4	July 8, 1933
35	July 20, 1933
69	July 26, 1933

Defendant's Exhibits:

Number of Exhibit	Portion thereof to be included
1-A	All
2-A	All

Dated this 7th day of October, 1942.

WETER, ROBERTS &
SHEFELMAN,

Attorneys for Appellant

J. CHAS. DENNIS,

THOMAS R. WINTER,

Attorneys for Appellee.